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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 186.

WILLIAM CRAWFORD, APPELLANT,

vs.

CHARLES A. NEAL.

FILED OCTOBER 8, 1888.

No. 278.

CHARLES A. NEAL, APPELLANT,

vs.

JOHN A. CRAWFORD AND ASHBY PEARCE.

FILED OCTOBER 23, 1888.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

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APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

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1 DISTRICT OF OREGON, ss:

I certify that on the 4th day of September, 1888, at Portland, Multnomah county, in said district, I duly served the within citation on appeal upon the therein-named Charles A. Neal, complainant, by delivering a copy thereof to George H. Williams personally, an attorney of the Supreme Court of the United States and one of the solicitors for the complainant, and also by delivering a copy thereof to C. E. S. Wood, personally, solicitor for the complainant, duly certified to by me as U. S. marshal.

JOHN MYERS,
United States Marshal,
By H. C. MYERS, *Deputy.*

2 UNITED STATES OF AMERICA, *District of Oregon,* } ss:

To Charles A. Neal, Greeting:

Whereas William Crawford has lately appealed to the Supreme Court of the United States from a decree rendered in the circuit court of the United States for the district of Oregon in your favor and has given the security required by law, you are therefore hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October, A. D. eighteen hundred and eighty-eight, to show cause, if any there be, why the said decree should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said district, this September 4, 1888.

MATTHEW P. DEADY,
U. S. District Judge.

[Endorsed:] No. 1258. U. S. circuit court, district of Oregon. Charles A. Neal, complainant, *vs.* J. H. Foster, John A. Crawford, William Crawford, Ashby Pearce *et al.*, defendants. Citation on appeal. Filed Sept. 4, 1888. R. H. Lamson, clerk, by R. B. Lamson, deputy clerk.

3 UNITED STATES OF AMERICA, *District of Oregon,* } ss:

To John A. Crawford and Ashby Pearce, Greeting:

Whereas Charles A. Neal has lately appealed to the Supreme Court of the United States from a decree rendered in the circuit court of the United States for the district of Oregon in your favor and has given the security required by law, you are therefore hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washinton on the second Monday of October, A. D. eighteen hundred and eighty-eight, to show cause, if any there be, why the said decree should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said district, this 5th day of September, 1888.

MATTHEW P. DEADY,
U. S. District Judge, Oregon.

[Endorsed:] No. 1258. U. S. circuit court, district of Oregon. Charles A. Neal, complainant, *vs.* J. H. Foster, John A. Crawford *et al.* Citation on appeal. Filed Sept. 7, 1888. R. H. Lamson, clerk, by R. B. Lamson, deputy clerk.

Due service of the within citation on appeal by certified copy, as provided by law, is hereby admitted at Portland, Oregon, this 6th day of September, 1888.

———.

Attorney of the Supreme Court and Solicitor for the Defendants John A. Crawford, William Crawford, and Ashby Pearce.

WHALLEY, BRONAUGH & NORTHOP.
Solicitors for the Defendants John A. Crawford, William Crawford, and Ashby Pearce.

4 In the Circuit Court of the United States for the District of Oregon, April Term, 1886.

Be it remembered that on the 21st day of July, 1886, there was duly filed in the circuit court of the United States for the district of Oregon a transcript on removal from State circuit court in words and figures as follows, to wit:

5 1258.

In the Circuit Court of Oregon for Linn County.

CHARLES A. NEAL, Plaintiff,
vs.
J. H. FOSTER, J. A. CRAWFORD, WILLIAM CRAWFORD, ASHBY Pearce, John R. Baltimore, J. L. Liles, E. Walden, and W. H. Galtra, Defendants.

Transcript.

Endorsed: Filed July 21st, 1886. R. H. Lamson, clerk.

6 In the Circuit Court of Oregon for Linn County.

CHARLES A. NEAL
vs.
J. H. FOSTER *et al.*

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7 In the Circuit Court for the State of Oregon for Linn County.

CHARLES A. NEAL, Plaintiff,
vs.
J. H. FOSTER, JOHN A. CRAWFORD, WILLIAM CRAWFORD, ASHBY Pearce, John R. Baltimore, J. S. Liles, E. Walden, and W. H. Galtra, Defendants.

Comes now J. H. Foster, John A. Crawford, and William Crawford, three of the defendants above named, and demurs to the complaint herein and for grounds thereof allege that there is a misjoinder of parties defendant, and that the same appears on the face of the complaint therein.

FLINN & CHAMBERLAIN,
Attorneys for J. H. Foster, William and John Crawford.

Filed July 12, 1886.

J. P. GALBRAETH, *Clerk.*

8 In the Circuit Court of the State of Oregon for Linn County.

CHARLES A. NEAL, Plaintiff,
vs.
J. H. FOSTER, J. A. CRAWFORD, WILLIAM CRAWFORD, ASHBY Pearce, John R. Baltimore, J. S. Liles, E. Walden, and W. H. Galtra, Defendants.

Comes now Ashby Pearce, one of the defendants above named, and demurs to the complaint herein, and for grounds thereof allege that there is a misjoinder of parties defendant, as appears in the face of the complaint herein.

FLINN & CHAMBERLAIN,
Attorneys for Ashby Pearce.

Filed July 17, 1886.

J. B. GALBREATH, *Clerk.*

9 Be it remembered that at a regular term of the circuit court of the State of Oregon for the county of Linn begun and held at the court-house, in the city of Albany, in the said county and State, on Monday, the 28th day of June, A. D. 1886, the same being the fourth Monday in said month and the time fixed by law for holding a regular term of said court—when were present the Hon. R. P. Boise, judge, presiding, the Hon. Geo. E. Chamberlain, act'g dist. attorney, J. P. Galbraith, clerk, D. S. Smith, sheriff—when, on Tuesday, the 6th day of July, A. D. 1886, or the seventh judicial day of said term, among others the following proceedings were had, to wit:

10 In the Circuit Court of the State of Oregon for the County of Linn. In Equity.

CHARLES A. NEAL, Plaintiff,
vs.
JAMES H. FOSTER, JOHN A. CRAWFORD, WILLIAM CRAWFORD, Ashby Pearce, John R. Baltimore, J. S. Lisle, E. Walden, and W. H. Goltra, Defendants.

Removal of *court* to Federal court under act of Congress of March 3rd, 1875, and on grounds of prejudice and local influence.

Now comes Charles A. Neal, the plaintiff herein, by his attorneys, and it appearing to the court upon the petition of said plaintiff filed therein and on hearing Mr. —— ——, of counsel for the petitioner, *but* said petition was duly made and filed herein by the petitioner, and that said petitioner has made and filed his affidavit herein as required by the statutes of the United States in this case made and provided, to wit, the act of Congress of March 2nd, 1867, sec. 639, subdivision 3, and has filed due and sufficient bond, with approved surety, and conditioned in all things as by law provided under the said act of March 2nd, 1867, and the act of Congress of March 3rd, 1875, entitled "An act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from State courts, and for other purposes;" therefore,

11 on the pleadings and proceedings herein and on the petition and bond aforesaid and on motion of Mr. —— ——, of counsel for the plaintiff, it is hereby ordered that said bond be, and is hereby, approved as sufficient security in the premises, and that this court proceed no further in this cause, but that this cause and the whole thereof be removed into the circuit court of the United States for the district of Oregon.

Dated this 6th day of July, 1886.

R. P. BOISE, *Judge.*

Filed July 6th, 1886.

J. P. GALBRAITH, *Clerk,*
By F. M. REDFIELD, *Deputy.*

12 Know all men by these presents that we, Charles A. Neal of the State of Illinois, as principal, and C. B. Wordworth, of Portland, in the State of Oregon, as surety, are hereby held and firmly bound unto the clerk of the circuit court of the State of Oregon for Linn county and all other persons whom it may concern in the penal sum of five hundred dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents.

The condition of the above obligation is such that, whereas the said Charles A. Neal has petitioned the circuit court of the State of Oregon for Linn county for the removal of a certain cause therein pending, wherein the said Charles A. Neal is plaintiff and James H. Foster, John A. Crawford, William Crawford, Ashby Pearce, John R. Baltimore, J. S. Lisle, E. Walden, and W. H. Goltra are defend-

ants, to the circuit court of the United States for the district of Oregon: Now, if the said Charles A. Neal shall enter and file or cause to be entered and filed in the next circuit court of the United States in and for the district of Oregon, on the first day of its session or as soon thereafter as by law provided, copies of all process, pleadings, depositions, testimony, and other proceedings concerning or affecting the petitioner in said cause, to wit, a full copy of the complete record in said suit, and shall pay all costs that may accrue or be awarded by the said circuit court of the United States if said court shall hold that said suit was wrongfully or unproperly removed thereto, and shall then and there appear and enter special bail in said suit, and shall do or cause to be done such other and proper acts as by the act of Congress of March 3rd, 1875, and other acts of Congress relative to the removal of causes from State courts to circuit courts of the United States are required to be
13 done, then this obligation to be void; otherwise to remain in full force and virtue.

Witness our hands and seals this 3rd day of July, 1886.

CHARLES A. NEAL, [L. S.]
By WILLIAMS, ACH AND WOOD,
His Attorneys.
C. B. WOODWORTH. [L. S.]

Executed in the presence of—

WM. M. LADD.
W. H. DUNCKLEY.

STATE OF OREGON, } ss:
County of Multnomah, }

I, C. B. Wordworth, of said State and county, the surety named in the foregoing bond, being duly sworn, do depose and say that I am a resident of the State of Oregon and a property-holder therein; that I am worth the sum of one thousand dollars, over and above all my debts and liabilities and exclusive of property by law exempt from execution; that I have property in the State of Oregon, liable to execution, of the value of more than one thousand dollars.

C. B. WORDWORTH.

Subscribed in my presence by C. B. Wordworth and by him sworn to before me this 3rd day of July, 1886.

J. E. BOYNTON,
Notary Public for Oregon.

Filed July 6th, 1886.

J. P. GALBRAITH, *Clerk,*
By F. M. REDFIELD, *Deputy.*

14 In the Circuit Court of the State of Oregon for the County of Linn. In Equity.

CHARLES A. NEAL, Plaintiff,
vs.
JAMES H. FOSTER, J. A. CRAWFORD, WILLIAM CRAWFORD, ASHBY Pearce, John R. Baltimore, J. S. Lisle, E. Walden, and W. H. Goltra, Defendants.

Affidavit for removal to the circuit court of the United States for the district of Oregon upon the ground of prejudice and local influence.

STATE OF OREGON, *County of Linn,* } *ss:*

I, C. E. S. Wood, being first duly sworn, say that I am one of the attorneys for the plaintiff in the above-entitled cause, Charles A. Neal, and that I and my client, the said Charles A. Neal, have reason to believe and do believe that from prejudice and local influence said plaintiff will not be able to obtain justice in said State court, and that the reason I make this affidavit myself is: the said Charles A. Neal is a citizen of the State of Illinois and resident therein, and is now and has not been since the beginning of this suit within the State of Oregon.

C. E. S. WOOD,
Att'y for Chas. A. Neal.

15 Subscribed and sworn to by the said C. E. S. Wood in my presence this 3 day of July, 1886.

[SEAL.]

J. E. BOYNTON,
Notary Public for Oregon.

Filed July 6th, 1886.

J. P. GALBRAETH, *Clerk,*
By F. M. REDFIELD, *Deputy.*

16 In the Circuit Court *for* the State of Oregon for the County of Linn. In Equity.

CHARLES A. NEAL, Plaintiff,
vs.
JAMES H. FOSTER, JOHN A. CRAWFORD, WILLIAM CRAWFORD, Ashby Pearce, John R. Baltimore, J. S. Liles, E. Walden, and W. H. Goltra, Defendants.

Petition for the Transfer of the Suit to the Federal Court.

To the honorable the circuit court of the State of Oregon for Linn county:

Your petitioner, Charles A. Neal, respectfully shows that he is the plaintiff in the above-entitled suit, and that the same was by him commenced on or about the first day of July, 1886, in the said circuit court of Oregon for Linn county; that your petitioner was at

the time of bringing the said suit and still is a citizen of the State of Illinois and a resident thereof; that there was at the time said suit was brought and still is a controversy therein between your petitioner and the said defendants, James H. Foster, John A. Crawford, William Crawford, Ashby Pearce, John R. Baltimore, J. S. Liles, E. Walden, and W. H. Goltra, who were at the time of the beginning of said suit and still are, each and all of them, citizens of the State of Oregon and residents thereof; that said suit was brought by your petitioner for the purpose of setting aside certain conveyances
17 as fraudulent and to recover and satisfy certain judgments duly rendered, of which your petitioner is now the lawful holder, all as in the complaint in said suit alleged; that the conveyances sought to be set aside as aforesaid were made by the defendants James H. Foster to the defendants John A. Crawford, William Crawford, and Ashby Pearce, respectively, as in said complaint alleged; that the real estate conveyed or sought to be conveyed by the said conveyances is situated in the county of Linn, State of Oregon; that said judgment sought to be recovered and satisfied in said suit are against the defendant James H. Foster, and that each of said judgments and the matter in dispute in said suit exceeds the sum of five hundred dollars, exclusive of costs.

Your petitioner further represents that said suit has not yet been tried but is now pending for trial in the said circuit court of Oregon for Linn county, and that your petitioner desires to remove the same into the circuit court of the United States for the district of Oregon in pursuance of the act of Congress provided, to wit, section 639 of the Revised Statutes of the United States, subdivision 3, and upon the further grounds that your petitioner was at the time of the bringing of this suit and still is a citizen of the State of Illinois and a resident thereof, as aforesaid, and that all of the defendants were at the time of the bringing of this suit and still are citizens and residents of the State of Oregon, as aforesaid, as by law provided in the act of Congress passed March 3rd, 1875.

Your petitioner further shows that he has filed the affidavit required by said statute, section 639 of the Revised Statutes of the United States, subdivition 3, and he herewith offers and files his bond, duly executed by C. B. Wordworth, of Portland, Oregon, as surety, in the penal sum of five hundred dollars, conditioned
18 as by both of said acts of Congress required.

Your petitioner therefore prays that the said bond may be accepted as good and sufficient, according to the said acts of Congress, and that said suit may be removed into the next circuit court of the United States for the district of Oregon pursuant to said acts of Congress in such cases made and provided, and that, excepting the order so removing said cause, no farther proceedings may be had therein in this court.

WILLIAMS, ACH & WOODS,
Attorneys for Plaintiff.

Filed July 6th, 1886.

J. P. GALBRAITH, *Clerk*,
By F. M. REDFIELD, *Deputy.*

19 *Summons.*

In the Circuit Court for the State of Oregon, County of Linn.
In Equity.

CHARLES A. NEAL, Plaintiff,
vs.
J. H. FOSTER, JOHN A. CRAWFORD, WILLIAM CRAWford, Ashby Pearce, John R. Baltimore, J. S. Liles, E. Walden, and W. H. Goltra, Defendants. } Summons.

To James H. Foster, John A. Crawford, William Crawford, Ashby Pearce, John R. Baltimore, J. S. Liles, and E. Walden, the above-named defendants:

In the name of the State of Oregon, you are hereby required to appear and answer the complaint of the above plaintiff in the above-entitled court, now on file with the clerk of said court, within ten days from the date of the service of this summons upon you if served in Linn county, Oregon, but if served in any other county in the State of Oregon, then within twenty days from the date of the service of this summons upon you, and you are hereby notified that if you fail to appear and answer said complaint as hereby required the plaintiff will apply to the court for the relief demanded in the complaint.

WILLIAMS, ACH & WOODS,
Attorneys for Plaintiff.

20 Received July 2nd, 1886.

J. R. CHARLTON,
Sheriff Linn Co.,
Per JAS. J. CHARLTON, *Deputy.*

To the sheriff of Linn Co., Oregon:

Please serve copy of complaint on the defendant John A. Crawford only.

WILLIAMS, ACH & WOODS,
Attorneys for Plaintiff.

STATE OF OREGON, } ss:
County of Linn, }

I hereby certify that I served the annexed summons in Linn county, Oregon, on the 3rd day of July, 1886, on the therein-named defendant, John A. Crawford, by delivering to him in person a co[py] of said summons, prepared and certified to by me as sheriff, toge[ther] with a copy of the complaint in the therein-entitled action, [pre]pared and certified to by D. Auorens, county clerk; and I [fur]ther certify that I served said summons in the county and State [aforesaid] on the date aforesaid on the therein-named defendants, J. H. [Foster], William Crawford, John R. Baltimore, J. S. Liles, and W. H. Goltra, by delivering to each of them in person a copy of [the] same.

[Dated] this 3rd day of July, 1886.

J. R. CHARLTON,
Sheriff Linn Co.,
Per JAS. J. CHARLTON, *Deputy.*

[Fees] $1.00

[Filed] July 3rd, 1886.

D. AUORENS, *County Clerk.*

[Fees] $1.00

21 *Demurrer.*

In the Circuit Court for the State of Oregon, County of Linn.
In Equity.

CHARLES A. NEAL, Plaintiff,
vs.
J. H. FOSTER, JOHN A. CRAWFORD, WILLIAM CRAWford, Ashby Pearce, John R. Baltimore, J. S. Liles, E. Walden, and W. H. Goltra, Defendants. } Demurrer.

Come now the defendants, James H. Foster, John A. Crawford, William Crawford, Ashby Pearce, John R. Baltimore, J. S. Liles, and E. Walden, and demur to the complaint of the plaintiff herein, and for cause of demurrer say that the said complaint does not state facts sufficient to constitute a cause of suit or action against these defendants.

JOHN H. MITCHELL,
Attorney for Defendants.

Received July 6th, 1886.

J. R. CHARLTON,
Sheriff Linn Co.,
Per JAS. J. CHARLTON, *Deputy.*

[Filed] July 6th, 1886.

D. AUORENS, *County Clerk.*

[Fees] $1.00

mons, prepared and certified to by me as sheriff, the said summons having endorsed thereon the following, to wit:

To the sheriff of Linn Co., Oregon:

Please serve a copy of complaint on the defendant John A. Crawford only.

WILLIAMS, ACH & WOODS,
Attorney- for Plaintiff.
J. K. CHARLTON,
Sheriff Linn Co., Oregon.
Per JAS. J. CHARLTON, *Deputy.*

21 In the Circuit Court for the County of Linn, Oregon.

STATE OF OREGON, *Benton County,* } ss:

I hereby certify that I received the above summons on the 16th day of July, A. D. 1886, and personally served the same on the 17th day of July, A. D. 1886, on E. Walden, being defendant named in said summons, by delivering to said E. Walden, said defendant, personal-y, in the county of Benton and State of Oregon, a copy of said summons, prepared and certified to by me as sheriff of Benton county, Oregon.

Dated this 17th day of July, A. D. 1886.

Sheriff's fees, $2.65.

WM. MACHAY, *Sheriff,*
By EBMILRUR, *Deputy.*

STATE OF OREGON, *County of Linn,* } ss:

I hereby certify that I served the annexed summons, in Linn county, Oregon, on the therein-named defendant, Ashby Pearce, by delivering to him in person a copy thereof, prepared and certified to by me as sheriff, said copy bearing all the endorsements that appear on said original summons.

Sheriff's fees, $—.

D. L. SMITH,
Sheriff of Linn County, Oregon.

Filed July 19th, 1886.

J. P. GALBRAETH, *Clerk.*

22 In the Circuit Court of the State of Oregon for the County of Linn. In Equity.

CHARLES A. NEAL, Plaintiff,
vs.
J. H. FOSTER, JOHN A. CRAWFORD, WILLIAM CRAWFORD, Ashby Pearce, John R. Baltimore, J. S. Liles, E. Walden, and Goltra, Defendants.

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That plaintiff complains against the defendants, and, for cause of and 5 were, s that on and prior to Feb. 6th, 1884, the defendant J. H.

36

Foster was indebted to W. S. Sibson, E. Quackenbush, S. Farrell, and C. P. Church, partners, composing the firm of Sibson, Church & Co., of Portland, Oregon, in the sum of $13,034.96; that subsequently, to wit, on April 15th, 1885, a stated account of said indebtedness was furnished to defendant J. H. Foster and demand of payment made by said Sibson, Church & Co.; that said account was not paid, and the said indebtedness was, on July 15th, 1885, for a valuable consideration, assigned to W. S. Sibson, E. Quackenbush, and S. Farrell, partners, composing the firm of Sibson, Quackenbush & Company, of Portland, Oregon, by said firm of Sibson, Church & Company, and on Jan. 19th, 1886, an action upon said account was by said Sibson, Quackenbush & Company brought against the defendant herein, J. H. Foster, to recover said $13,034.96, with interest thereon from April 15th, 1885, at the rate of 8 % per annum; that on March 8th, 1886, the said plaintiffs in said action, to wit, Sibson, Quackenbush & Co., duly recovered judgment in said action against J. H. Foster, the defendant therein and herein, to the sum of
$14,037.87, with costs taxed at $8.85 and interest in the ag-
23 gregate amount of $14,046.72 at the rate of 8 % per annum,
which judgment aforesaid was duly given and made and was duly entered and docketed in the proper records of the said circuit court of Oregon for Linn county on the date aforesaid, to wit, March 8th, 1886; that execution upon said judgment was duly and regularly issued to the sheriff of said Linn county March 15th, 1886; which said execution was by said sheriff duly returned and filed March 16th, 1886, wholly unsatisfied.

That every effort at law has been made to have said judgment paid and satisfied, but no part thereof has ever been paid or satisfied for the reason that the said defendant, J. H. Foster, has no property whatever within this State or elsewhere out of which this judgment can be satisfied according to law, and the whole thereof is now due and owing to the plaintiff, and is a valid subsisting lien on all property of said defendant, Foster, which may be within said Linn county; that the said circuit court of Oregon for Linn county was at all times herein mentioned and now is a court of competent jurisdictions to hear and determine the matters in controversy in the action aforesaid and to render and execute the said judgment given therein.

That on June 11th, 1886, W. S. Sibson, E. Quackenbush, and S. Farrell, partners as aforesaid, for a valuable consideration duly sold and assigned to the plaintiff herein, Charles A. Neal, all their right, title, and interest in and to the judgment aforesaid, and the plaintiff herein ever since has been and now is the lawful owner and holder thereof.

Plaintiff further alleges that on and prior to the aforesaid
24 named date, to wit, Feb. 6th, 1884, the defendant J. H. Foster was indebted to W. C. Noon, F. F. Osborn, G. [illegible] over ant, S. A. Neville, and C. M. Osborn, partners composing [illegible] city of of W. C. Noon and Company, in the sum of $1,599.00; that [illegible] located 8th, 1884, defendant J. H. Foster gave to said firm of Waid right [illegible] ter of the

and Co. his promissory note bearing date as aforesaid, to wit, Feb. 8th, 1884, for the sum of $1,599.00, with interest thereon at 10 %.

That during the month of February, 1884, to wit, Feb. —, the defendant J. H. Foster purchased and received from said firm of W. C. Noon & Co. good-, wares, and merchandise of the agreed price and value of $845.00, on which sum defendant Foster agreed to pay 10 % interest per annum after sixty days from the date of sale, to wit, that on Feb. 18th, 1886, an action to *recover* the sum due upon the agreements just aforesaid was brought in the circuit court of Oregon for Linn county by the said W. C. Noon and Co. against the said defendant therein and herein, J. H. Foster, and on March 8th, 1886, the said plaintiff- therein, W. C. Noon & Co., duly recovered against the defendant therein and herein, J. H. Foster, judgment in said action in the sum of $1,909.15, with costs taxed at $11.20, and interest on the aggregate sum, to wit, $1,920.35, at the rate of 8 % per annum; that said judgment was duly given and made and was duly and regularly entered and docketed in the proper records of said circuit court for Linn county on said date, to wit, March 8th, 1886; that execution thereon was duly issued to the sheriff of said Linn county March 15th, 1886, and was by said sheriff duly returned and filed wholly unsatisfied; that every effort at law had been made to have said judgment satisfied and paid, but no part thereof has been satisfied or paid for the reason that the defendant J. H. Foster has no property of any nature within this State or elsewhere out of which said judgment can be satisfied according to law, and the whole thereof is now due and owing to plaintiff and is a valid and subsisting lien upon all the property of said J. H. Foster which may be within said county of Linn; that the said circuit court for said Linn county was at all times herein mentioned and now is a court of competent jurisdiction to hear and determine all matters in controversy in the said action and to render and execute the said judgment therein.

That on June 19th, 1886, the judgment creditors just aforesaid, to wit, W. C. Noon, F. F. Osborn, G. H. Bryant, S. A. Neville, and C. M. Osborn, partners as aforesaid, for a valuable consideration, duly sold and assigned to the plaintiff herein all their right, title, and interest in and to the judgment aforesaid, and the plaintiff herein ever since and now is the lawful owner and holder thereof; that at the time each and all of said debts were contracted by said J. H. Foster and upon which the aforesaid judgments were duly rendered the said defendant Foster was the lawful and acknowledged owner of all the several tracts of real property in Linn county, Oregon, hereinafter described; that he continued so to be the acowledged owner thereof until Feb. 6th, 1884, and all of the credit the bnded to him by the several judgment creditors herein referred hay, Ls upon the faith and credit of his ownership of the property offices aid.

tenances on Feb. 6th, 1884, the judgment debtor aforesaid and de- of Deed herein, J. H. Foster, conveyed or pretended to convey by That thdeeds in manner as hereinafter described the following tracts and 5 were of land situated in Linn county, Oregon, to wit:

Tract one. All that certain piece or parcel of land in the
26 town (now city) of Albany, Linn county, Oregon, and known and described as the "mill lot," bounded on the south by an alley dividing block 12—running east and west—on the east by a line running from the east end of said alley along the east boundaries of blocks No. 12 and No. 1, in said town (now city), and on the same range to the mouth of the Calapooia creek up to the mill-dam, thence along said mill-dam to the west side of said stream at the usual stage of water in the dam, then along and up said stream to a point immediately west of the place of beginning, thence east across said stream to where said alley dividing block No. 12 strikes the said Calapooia, together with the mill-dam, water power, buildings, and machinery belonging or appertaining to said lot and mill, and also the mill-race or tail-race leading from said mills, together with all tenements and hereditaments and appurtenances thereunto belonging or in anywise appertaining, saving and excepting therefrom the following: A race leading from the mill-dam on or near said premises formerly to a saw-mill belonging to Walter and Thomas Monteith, and now leading to the flouring mill of Thomas Monteith and Son, with the right at all times to repair and use the same, the said race, for the purpose of conveying the water of said creek from said dam through said premises, the defendant Foster to have the absolute right to take from said water above said dam seven hundred and twenty (720) cubic inches thereof, with the full, complete, absolute right to use any and all of the residue of said water which the owners of said race leading from said dam to the flouring mill of Thomas Monteith and Son may not wish to take from said dam through said race; provided, however, that the said J. H. Foster should keep said dam as high as it was on October fourth, eighteen hundred and fifty-five, and also in good repair, and, in case of destruction, to have a reasonable time in which to rebuild it; which said conveyance was, on February 7,
27 1884, recorded in Book 27 of Deeds — Linn county, Oregon, page 500.

Tract 2. A right of way for a flume and ditch eight feet wide at the bottom and the sides sloping outward one *or one* or at an angle of 45 — over and through the west side of fractional lot No. 8, in fractional block No. 13, in the city of Albany, Linn county, Oregon, as follows, to wit: Commencing at a point at or near the southwest corner of said fractional lot 8 aforesaid, and running thence northerly along the western portion of said fractional lot 8 aforesaid on the line and ground occupied by the flume and ditch now built and constructed on the western part of said lot 8 aforesaid to the northern line of said fractional lot 8 aforesaid; also the right of way for said flume and ditch eight feet wide at the bottom, the sides sloping outward at an angle of 45 — over and through the west side of fractional lot (1), in fractional block 13, and also over and through the west side of fractional block 12, all in the city of Albany, Linn county, Oregon, the said right of way to be located on the center line of the ditch and flume now built in said right of way or premises for the purpose of conveying the water of the

Santiam water ditch or canal to the flouring mills known as the "Magnolia mills," and extending four feet wide on each side of said center line of said flume or ditch at the bottom thereof, commencing at the southern boundary line of said fractional lot one (1), in said fractional block 13 aforesaid, and running thence northerly on the line where said ditch or flume is now built through the western portion of fractional lot one (1) aforesaid and through the western portion of fractional block 12 aforesaid the whole distance thereof from south to north, and the right to pass water through the same at all times at the full capacity the whole length of said ditch and flume for the pupose of transportation or other purposes
28 and to dig said ditch to any necessary depth to pass the water of the Santiam water ditch or canal through the same, and the right to enter upon the premises above described for the purpose of building, repairing, constructing, and using said ditch and flume for the purpose for which it was built without doing any unnecessary damage to the premises through which said right of way passes; which conveyance was recorded in Book 27 of Deeds as aforesaid, p. 499, February 7, 1884.

Tract 3. Block 55, in the city of Albany, Linn county, Oregon, as the same is designated and numbered on the maps and plats of said city now on file in the office of the county clerk of said Linn county, save and except two lots on the west side of said block heretofore sold to Maggie I. Foster (now Powell); which conveyance was recorded in Book 7 of Deeds as aforesaid, p. 520, February 7, 1884.

Tract 4. Lot No. one (1), in block No. 11, in the city of Albany, Linn county, Oregon; which deed was recorded in Book 7 of Deeds as aforesaid, p. 519, February 7, 1884.

Tract 5. An equal undivided one-half of the Albany water works, including hydrants, pipes, and mains and all stock on hand February 6, 1884, being situated in the city of Albany, Linn county, Oregon, and known as Foster and Crawford's water works; which conveyance was recorded — Book L of Deeds aforesaid, p. 522.

Tract 6. Commencing 8 feet west of the southeast corner of lot 4, in block 6, on First street, in the city of Albany, Linn county, Oregon, at the center of the wall between the building known as the Foster block and that now owned by Otto Fox and occupied by J. Gradwohl, running thence west parallel with said street 74 feet to the center of the partition wall between said Foster block and the building formerly occupied by Monteith and Leutenback, and from thence north 100 feet to the alley; thence east at right angles along the alley 74 feet to a point parallel with the place of be-
29 ginning, and from thence south, parallel with the center line just above described, to the place of beginning, so as to include the brick store now, February 6, 188–, occupied by Mason and Forhay, L. E. Blain, Witt Bros., and Mr. Ewcut's jewelry store, with the offices and halls above, with all and singular their rights and appurtenances of every name, nature, and description; recorded in Book 7 of Deeds aforesaid, p. 521, on February 7, 1884.

That the property described in this complaint as tracts 1, 2, 3, 4, and 5 were, on February 6, 1884, by the defendant J. H. Foster

conveyed to the defendant John A. Crawford as aforesaid, and tract 6 was by said defendant Foster conveyed to defendant William Crawford on the same date, to wit, February 6, 1884.

Tract 7. Commencing at a point on the north side of First street, in Albany, Linn county, Oregon, twenty-six feet, more or less, east from the southwest corner of lot 7 of block 4 of said city on the north-and-south line between John Foster and Jas. H. Foster, the defendant herein; thence north on the center of the brick wall to the north side of the alley that divides block 4 of said city running east and west; thence along south side of the alley 25 feet, more or less, to the center of the brick wall on the east side of the brick house on said land; thence south through the center of said wall to the north side of First street of said city; thence west along the north side of First street to the place of beginning; which said deed was recorded February 8, 1884, in Book 7 of Deeds as aforesaid, p. 526.

That the tract No. 7 just aforesaid was by defendant Foster on February 7, 1884, conveyed to defendant Ashby Pearce.

That each and all of said deeds of conveyance aforesaid from the defendant Jas. H. Foster to defendant- John A. Crawford, William Crawford, and Ashby Pearce, respectively, though ostensibly deed-absolute, made upon a valuable consideration, were and are in fact voluntary conveyances and were and are without and consideration whatever, but were made, executed, and delivered by defendant J. H. Foster and were accepted, received, and are now held by defendants John A. Crawford, William Crawford, and Ashby Pearce, respectively, with the intent and purpose to hinder, delay, defraud, and cheat the creditors and others of the defendant J. H. Foster, and were especially intended to delay, hinder, and defraud his creditors the aforesaid Sibson, Church & Co. and W. C. Noon and Co. and others; that at the time of making the conveyances as aforesaid the defendant Foster had no other property than that mentioned in this complaint, and said conveyances have ostensibly stripped him of all property whatever in this State or elsewhere, and said defendant Foster since said conveyances were made, to wit, February 6 and 7, 1884, has been and now is wholly insolvent.

That all of the matters and things herein alleged were at the time said conveyances were made and prior thereto well known to and understood by the defendants Foster, John Crawford, Wm. Crawford, and Ashby Pearce, and the said conveyances were made by said Foster and received by said defendants, respectively, and have since been held by them as aforesaid with full knowledge and belief and in contemplation that said conveyances would and do hinder and delay the said Sibson, Church and Co. and W. C. Noon and Co. and others from the collection of their just claims and dues as herein set forth, and said property has been and is held in secret trust for defendant Foster and in hindrance, delay, and in fraud of the rights and claims of the plaintiffs herein and others.

That there is no other property of defendant Foster out of which plaintiff can satisfy his judgment and he has no remedy at law

and his judgment aforesaid must remain unsatisfied unless
31 said fraudulent conveyances be set aside.

That said property was at the date of said conveyances worth the sum of $110,000.00, to wit, on February 6, 1884, and is now worth much more, to wit, the sum of ——.

That the defendants Jno. Crawford, Wm. Crawford, and Ashby Pearce still hold said property under the respective conveyances, and defendant Foster is now in the possession thereof and in enjoyment of the proceeds.

That all of defendants are citizens of Oregon and reside in Linn county, and defendants Foster, John Crawford, and Wm. Crawford and Ashby Pearce have resided in Linn county ever since the date of the said conveyances; that the defendants John R. Baltimore, W. H. Goltra, J. S. Liles, and E. Walden are the owners and holders of various several judgments duly given and made by the circuit court of Oregon for Linn county in separate actions brought by them respectively against the defendant J. H. Foster, to wit:

John R. Baltimore, March 10, 1884, $1,628.47 and $24.45 costs.

W. H. Goltra, February 23, 1886, $1,617.70 and $19.20 costs.

J. S. Liles, March 12, 1886, $1,039.80 and $9.95 costs.

E. Walden, February 23, 1886, $551.00 and $17.30 costs.

That all of said judgments were, on the dates just aforesaid, respectively entered and docketed in the records of the said circuit court for Linn county and are existing liens on any and all property of defendant Foster within said county of Linn.

Wherefore plaintiff prays for a decree that each and all of the said conveyances of real property made by defendant Jas. H. Foster to John A. Crawford, William Crawford, and Ashby Pearce, respectively, as aforesaid are fraudulent and void as to the plaintiff and other creditors of defendant Foster, and that the same be set aside,
cancelled, and annulled, and the said property be levied as
32 upon execution and sold to pay the claims of this plaintiff and others, and that the assets be marshalled and the priorities of liens between plaintiff and defendants Baltimore, Goltra, Liles, and Walden be fixed, and that plaintiff recover from defendants Foster, Jno. Crawford, and Wm. Crawford and Ashby Pearce or either of them and out of the proceeds of said property his costs and disbursements in this suit, and for such other and further relief as may be equitable and fit.

WILLIAMS, ACH & WOODS,
Attorneys for Plaintiff, Portland, Oregon.

STATE OF OREGON, } ss:
County of Linn, }

I, C. E. S. Wood, first being duly sworn according to law, say that I am one of the attorneys for the plaintiff herein and that the foregoing complaint is true, as I verily believe, and that the reason I make this affidavit is that the plaintiff is not now within the State of Oregon.

C. E. S. WOOD.

Subscribed and sworn to before me this July 1st, 1886. Witness my hand and official seal.

D. ANDREWS,
Clerk, Linn County.

[L. S.]

Filed July 1, 1886.

D. ANDREWS, *Clerk.*

33 In the Circuit Court of the State of Oregon for the County of Linn.

CHARLES A. NEAL, Plaintiff,
vs.
JAS. H. FOSTER, JOHN A. CRAWFORD, WM. CRAWFORD, *et al.*, Defendants.
} Statement of Disbursements.

Clerks' fees: Andrews, $5.40; Galbraith, $10.30	$15	70
Sheriffs' fees: Linn Co., $9.50; Benton Co., $2.65	$12	15
Trial fees	$	
Attorney fees	$	
Printing	$	
Notary fee	$	
Postage	$	30
Witness fees		

34 *Clerk's Certificate.*

STATE OF OREGON, *County of Linn,* } *ss:*

I, J. P. Galbraith, county clerk in and for Linn county, Oregon, and *ex officio* clerk of the circuit court of the State of Oregon for the county of Linn, do hereby certify that the foregoing and attached copy of the original papers has been by me carefully compared with the original papers in the case of Charles A. Neal, plaintiff, *vs.* Jas. H. Foster, J. A. Crawford, Ashby Pearce, J. R. Baltimore, J. S. Liles, E. Walden, and W. H. Goltra, defendants, now on file in my office and custody, and that it is a true and correct copy of all and the whole of said original papers.

In testimony whereof I have hereunto set my hand and [SEAL.] affixed the seal of said circuit court this 19 day of July, 1886.

J. P. GALBRAITH, *Clerk.*

Endorsed: Filed July 21, 1886. R. H. Lamson, clerk.

35 And afterwards, to wit, on the 21st day of August, 1886, there was duly filed in said court an answer of J. H. Foster, John A. & Wm. Crawford and Ashby Pearce in words and figures as follows, to wit:

36 In the Circuit Court of the United States for the District of Oregon.

CHARLES A. NEAL, Plaintiff,
vs.
JAMES H. FOSTER, JOHN A. CRAWFORD, WILLIAM CRAWFORD, Ashby Pearce, John R. Baltimore, J. S. Lisles, E. Walden, and W. H. Goltra, Defendants.

The answer of J. H. Foster, John A. Crawford, William Crawford, and Ashby Pearce, four of the above-named defendants.

These defendants, now and at all times hereafter, saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto or unto so much and such parts thereof as these defandants are advised are material or necessary to make answer unto, these defendants, for answering, say:

These defendants deny that on and prior to February 6th, 1884, the defendant J. H. Foster was indebted to W. S. Sibson, E. Quackenbush, S. Farrell, and C. P. Church, partners composing the firm of Sibson, Church & Co., of Portland, Oregon, in the sum of $13,034.96, or any other or greater sum than $6,800.75, or that subsequently, on April 15th, 1885, or at any other time, a stated account of said indebtedness was furnished to defendant J. H. Foster or a demand of payment made by said Sibson, Church & Co.; admit that defendant J. H. Foster has not paid said alleged indebtedness nor any part of it, and that on July 15th, 1885, said Sibson,
37 Church & Co. assigned to W. S. Sibson, E. Quackenbush, and S. Farrell, partners composing the firm of Sibson, Quackenbush & Co., of Portland, Oregon, said alleged indebtedness against the defendant Foster of $13,034.96, and allege that afterwards, to wit, on August 15th, 1885, the said Sibson, Quackenbush & Co. presented to defendant Foster a stated account of the amount due from said defendant Foster to said Sibson, Church & Co. on April 15th, 1885, which said stated account shows that all of said alleged indebtedness accrued after February 6, 1884, except $6,800.75 thereof; admit that said Sibson, Quackenbush & Co., on January 19th, 1886, brought an action on said alleged account and indebtedness against the defendants Foster, and that in said action said Sibson, Quackenbush & Co. recovered judgment against the defendant Foster for $14,037.87, with costs taxed at $8.25, with accruing interest on the aggregate sum at eight per cent. per annum, and that said judgment was duly docketed in the records of the circuit court of Oregon for Linn county, as alleged in the complaint.

Admit that execution was issued on said judgment and returned unsatisfied, as alleged in the complaint herein; deny that every or any effort at law except the issuing and returning of said execution has been made to have said judgment paid or satisfied, but admit that no part of said judgment has been paid or satisfied, and that defendant J. H. Foster has no property and had none at the com-

mencement of this suit, within this State or elsewhere, out of which said judgment can or could be satisfied, according to law or otherwise, but deny that the whole or any part thereof is due or owing to the plaintiff, or is a valid or subsisting lien or a lien at all upon all or any property of said defendant Foster which may be within said Linn county or elsewhere; admit that said circuit court
38 of Oregon for Linn county was and is a court of competent jurisdiction to hear and determine the controversy in the action aforesaid, and to render and execute said judgment given therein.

Admit that on or about June 11th, 1886, said W. S. Sibson, E. Quackenbush, and S. Farrell, partners as aforesaid, did sign a writing purporting to sell and assign to the plaintiff, Charles A. Neal, all their right, title, and interest in and to the judgment aforesaid, but deny that the plaintiff ever since or at any time since has been the lawful owner or holder thereof.

And these defendants allege, on information and belief, that said assignment of said judgment by said Sibson, Quackenbush & Co. to said Charles A. Neal, the plaintiff herein, made on or about June 11th, 1886, was made without the knowledge of said Charles A. Neal and without any consideration whatever paid or agreed to be paid by or on behalf of said Charles A. Neal to said Sibson, Quackenbush & Co.; that said pretended sale and assignment of said judgment was made for the sole and only purpose, object, and intent of collusively giving or attempting to give this court jurisdiction of this cause, and that the said Sibson, Quackenbush & Co. are now and have been ever since the rendition of said judgment the real owners thereof.

That said Charles A. Neal, the plaintiff, has no interest therein whatever except to lend said Sibson, Quackenbush & Co. the use of his name to prosecute this suit in this court; deny that for a valuable consideration or otherwise or at all the said W. S. Sibson, E. Quackenbush, and S. Farrell, partners as aforesaid, sold or assigned to the plaintiff, Charles A. Neal, all or any of their or either
39 of their right or title or interest in or to the said judgment against the defendant J. H. Foster, except as hereinbefore particularly alleged and set forth.

These defendants admit that prior to February 6th, 1884, the defendant J. H. Foster was indebted to W. C. Noon, G. H. Bryant, S. A. Neville, and C. M. Osborn, partners composing the firm of M. C. Noon & Co., in the sum of $1,599.00, and that he gave his note to said W. C. Noon & Co. for said $1,599.00 on February 8th, 1884, with interest at ten per cent. per annum; deny that during the month of February, 1884, or at any other time the defendant J. H. Foster purchased or received from said firm of W. C. Noon & Co. goods or wares or merchandise of the agreed price or value of $845.00 or any other price or value or at all, or that defendant Foster agreed to ten or any per cent. per annum or otherwise after sixty or any other number of days from the date of the alleged sale or at all.

Admit that on February 18th, 1886, an action was commenced on the alleged agreement in the circuit court of Oregon for Linn county

by the said W. C. Noon & Co. against the defendant Foster, and that in said action a judgment was rendered on March 8th, 1886, in favor of W. C. Noon & Co., the plaintiffs therein, and against J. H. Foster, the defendant therein and one of the defendants herein, for $1,909.15, with costs taxed at $11.20, with accruing interest on the aggregate sum at eight per cent. per annum; that said judgment was duly given, docketed, and in the proper records of said circuit court of Oregon for Linn county on said 8th day of March, 1886; that execution was duly issued thereon March 15th, 1886, to the sheriff of Linn county and was by him returned wholly unsatisfied, as alleged in the complaint herein.

Deny that every or any effort at law has been made to
40 have said judgment satisfied or paid, except the issuing and return of said execution.

Admit that no part of said judgment has been paid or satisfied and that defendant J. H. Foster has no property of any nature, within the State or elsewhere, out of which said judgment can be made according to law or otherwise, but deny that the whole or any part thereof is now due or owing to the plaintiff, or is a valid or subsisting lien upon all or any part of the property of said J. H. Foster which may be within said Linn county.

Admit that said circuit court of Oregon for Linn county was and is a court of competent jurisdiction to hear and determine all matters in controversy in the said action and to render and execute the said judgement, as alleged in the complaint herein.

Deny that on June 19th, 1886, the judgement creditors just aforesaid, to wit, W. C. Noon, T. F. Osborn, G. H. Bryant, S. A. Neville, and C. M. Osborn, partners as aforesaid, for a valuable consideration or otherwise, except as hereinafter particularly alleged and set forth, sold or assigned to the plaintiff herein all or any of their right or title or interest in or to the judgement aforesaid, or that plaintiff ever since or at any time since has been or now is the real or lawful owner or holder thereof.

Admit and aver that about the 19th day of June, 1886, the said W. C. Noon & Co. did sign a writing purporting to sell and assign to the plaintiff, Charles O. Neal, all their right, title, and interest in and to the judgement aforesaid, but allege on information and belief that said assignment and pretended sale of said judgement by said W. C. Noon & Co. to the plaintiff herein was made without the knowledge of said Charles A. Neal and without any consid-
41 eration whatever; that said assignment and pretended sale was made collusively and for the sole and only purpose, object, and intent of giving this court jurisdiction of this cause, and that said W. C. Noon & Co. are now and always have been since the rendition of said judgement the real owners thereof; that said judgement Charles A. Neal has no interest therein whatever except to lend W. C. Noon & Co. the use of his name to prosecute this suit in this court.

Deny that at the time each and all or any of said debts were contracted by said J. H. Foster, except the debt of $1,909.15 owing to W. C. Noon & Co. and $6,800.75 of the debt upon which Sibson

Quackenbush & Co. obtained a judgement, as alleged in the complaint herein, the said Foster was the lawful or acknowledged owner of all or any of the several tracts of real property or any portion thereof in Linn county, Oregon, and particularly described in the complaint herein and designated as tracts 1, 2, 3, 4, 5, 6, and 7, or that said Foster continued to be the acknowledged owner of the property aforesaid or any part thereof, or that all or any of the credit extended to him by the said several judgement creditors herein mentioned was upon the faith and credit in his ownership of the property aforesaid.

Admit that on Feb. 26, 1884, the defendant J. H. Foster conveyed by absolute deeds tracts 1, 2, 3, 4, and 5, as described in the complaint herein, to John A. Crawford; tract 6, as described in the complaint, to William Crawford, and tract 7, as described in the complaint, to Ashby Pearce, on Feb. 7, 1886; but deny that each or all or any of said deeds of conveyance from the defendant J. H. Foster to the defendants John A. Crawford, William Crawford, and Ashby Pearce, respectively, were or are in fact voluntary conveyances or were or are without any or full consideration or were made or executed or delivered by defendant J. H. Foster or were accepted
42 or received or are now held by defendants John A. Crawford, William Crawford, and Ashley Pearce, respectively, or otherwise or at all, with the intent or purpose to hinder or delay or defraud or cheat the creditors or any of them of the defendant J. H. Foster or any other person or persons, or were especially or at all intended to hinder or defraud his creditors, Sibson, Church & Co. or W. C. Noon & Co., or any one else.

But these defendants answer and state the truth in that respect to be that the defendant, J. H. Foster, on the 6th day of February, 1884, was deficient and short about twenty thousand bushels of wheat which he had received on storage and given warehouse receipts therefor under the name and description of J. H. Foster & Co., under which name and description the said defendant Foster was then and for a long time prior thereto had been, to wit, from 1876, doing business.

The said warehouse receipts were on said 6th day of February, 1884, outstanding against said defendant Foster, and said defendant Foster had not sufficient wheat into about twenty thousand bushels to meet said warehouse receipts, nor had he purchased the wheat represented by said warehouse receipts, but about twenty thousand bushels of wheat was due on demand from said defendant Foster to various persons on said warehouse receipts.

That on said 6th day of February, 1884, the defendants J. H. Foster and John A. Crawford entered into a contract whereby the defendant Foster sold and agreed to convey to said John A. Crawford the several tracts of land and parcels of property in the complaint herein designated as tracts 1, 2, 3, 4, 5, & 6, being all of
43 the property described in the complaint herein except tract 7, and whereby said defendant, J. H. Foster, also agreed to assign and deliver to said John A. Crawford all the book accounts then owned by said J. H. Foster pertaining to the warehouse and

milling business and water works in the city of Albany, then being carried on by the said defendant Foster under the firm name and style of J. H. Foster & Co., the value of which said accounts was then estimated to be and was in fact about $3,000.00, and whereby said defendant Foster agreed to sell and deliver to said John A. Crawford all the grain sacks owned by said defendant Foster pertaining to the said warehouse and milling business, the value of which said grain sacks was then estimated to be and was in fact about $3,000.00, and in consideration of said property and as the purchase price thereof the said defendant, John A. Crawford, agreed to pay said J. H. Foster the sum of about $64,000.00, and also agreed to furnish about 20,000 bushels of wheat to various persons and parties who held warehouse receipts for wheat against the said J. H. Foster under the name and description of J. H. Foster & Co., or to pay for the same, and to take said Foster's place and take and assume all his liability in regard to said wheat and said warehouse receipts which said Foster had given for wheat as aforesaid and which had not been redeemed or purchased by said Foster, and to this supply all the deficiency in wheat upon such warehouse receipts then outstanding against said defendant, J. H. Foster, which deficiency was then estimated to be and was in fact about 20,000 bushels.

That about the sum of $64,000.00 was to be paid by said John A. Crawford to said defendant, J. H. Foster, by the said John A. Crawford paying a note of $5,000.00 to the Bank of British Columbia, which the said defendant, J. H. Foster, then owed and upon which said John A. Crawford was security; by paying a note of $5,000.00 to the First National Bank of Albany, Oregon, which the said defendant J. H. Foster then owed and upon which said John A. Crawford was security; by paying $1,000.00 on a note which said defendant J. H. Foster then owed to John Conner and upon which said John A. Crawford was security; by paying a note of about $4,900.00 which the said defendant J. H. Foster then owed to Frank Paxton and upon which said John A. Crawford was security; by paying and surrendering up six several promissory notes, dated July 20th, 1883, upon which there was then owing from the defendant J. H. Foster to the defendant William Crawford $16,433.00; by surrendering up as paid and cancelled three several promissory notes upon which there was then owing from the defendant J. H. Foster to the defendant John A. Crawford the aggregate sum of $26,520.00, and by surrendering up as paid and satisfied an account of $5,803.00 that was then due — owing from said defendant J. H. Foster to the defendant John A. Crawford at the time of said sale and conveyance, to wit, February 6th, 1884; that in accordance with the terms of said contract the said J. H. Foster conveyed the several tracts and parcels of property and rights mentioned and described in the complaint herein as tracts 1, 2, 3, 4, and 5 to John A. Crawford, and at the request of said John A. Crawford said defendant Foster conveyed the tract and parcel designated as tract 6 in the complaint herein to the defendant William Crawford, and then and there assigned and delivered to said John A. Craw-

ford the book accounts and grain sacks above mentioned of said defendant J. H. Foster, and estimated to be worth and which were worth, in fact, $3,000.00 each, and the said defendant John A. Crawford then and there assumed said J. H. Foster's place and liability in regard to said warehouse receipts and wheat that was short and furnished and supplied and paid for at his own expense and cost to those who held warehouse receipts for wheat given by said
45 defendant J. H. Foster which had not been redeemed or purchased by said defendant Foster about 20,000 bushels under the terms of said contract and as part of the purchase price of said property, and then and there paid said defendant J. H. Foster about the sum of $64,000 as part of the purchase price of said property under the terms of said contract by surrendering up to said defendant J. H. Foster as paid and cancelled the said six several promissory notes dated July 20th, 1883, upon which there was owing from the defendant J. H. Foster to the defendant William Crawford the sum of $16,133.00, and by surrendering up to the said defendant J. H. Foster the three several promissory notes as paid and cancelled upon which there was due and owing from the defendant J. H. Foster to the defendant John A. Crawford the aggregate sum of $26,520.00, and by surrendering up as paid and satisfied an account of $5,803.00 that was then due and owing from the defendant J. H. Foster to the defendant John A. Crawford, and by paying to the First National Bank of Albany, Oregon, the note of $5,000.00 which the said defendant J. H. Foster then owed and upon which said John A. Crawford was security, and by paying $1,000.00 on the note which said defendant J. H. Foster then owed to John Conner and upon which said defendant John A. Crawford was security, and by paying the note of about $4,900.00 which the said defendant J. H. Foster then owed to Frank Paxton and upon which the defendant John A. Crawford was security, and by paying to the Bank of British Columbia the note of $5,000.00 which the said defendant J. H. Foster then owed and upon which said John A. Crawford was security.

That the amount so agreed to be paid and so paid by said John A. Crawford to defendant J. H. Foster for said property was, in fact, more than said property was reasonably worth.

That said contract made by said defendant J. H. Foster
46 with the defendant John A. Crawford and the conveyances mentioned and set forth in the complaint herein by the defendant J. H. Foster to the defendants John A. Crawford and William Crawford were made in good faith and for a full and adequate consideration and without any intention of hindering or delaying or defrauding any of the creditors of the said defendant J. H. Foster.

And the defendants, further answering the complaint of the plaintiff herein, allege—

That prior to the 7th day of February, 1884, the defendant Ashby Pearce borrowed of the First National Bank of Albany, Oregon, for the use and benefit of the defendant J. H. Foster $5,000.00.

That the defendant J. H. Foster received said $5,000.00 and signed

a note as surety with said defendant Ashby Pearce to said First National Bank of Albany therefor.

That on the 7th day of February, 1884, said note for said $5,000.00 was due and unpaid.

That on said 7th day of February, 1884, the said defendant, J. H. Foster, sold and conveyed the tract of real property mentioned and described in the complaint as tract No. 7 to the defendant Ashby Pearce for the sum of $4,000.00, subject, however, to the life estate of Mrs. L. M. Foster therein.

The said $4,000.00 was to be paid and was paid by the defendant Ashby Pearce as the purchase price of said property by paying $4,000.00 of the $5,000.00 due on said promissory note and canceling $4,000.00 of said indebtedness as between said Pearce and Foster.

That $4,000.00 is more than said property, to wit, tract 7, was worth, subject as it was to the life estate of Mrs. L. M. Foster, and that said conveyance by said defendant, J. H. Foster, to the defendant Ashby Pearce was in good faith and for a full and ad-
47 equate] compensation and consideration and without any intention to hinder or delay or defraud any of the creditors of said defendant, J. H. Foster.

And these defendants deny that at the time of making said conveyances the defendant Foster had no other property than that mentioned in the complaint herein or that said conveyance did ostensibly strip him of all property in this State or elsewhere, but aver that said defendant, Foster, had and owned at the time of making said conveyances and for some time thereafter a large amount of flour and feed in his mill in Albany, in Linn county, Oregon, and a large amount of flour shipped by said Sibson, Church & Co. to Europe, which was afterward sold by said Sibson, Church & Co. for said defendant, Foster, during the last of the year 1884, and that on said February 6th, 1884, a large amount of money was due said J. H. Foster in Portland, Oregon, from Everding & Farrell, to wit, $413.14, which said sum of $413.14 was afterwards, on Feb. 9th, 1884, paid over to said Sibson, Church & Co. on said J. H. Foster's account.

That on said 6th day of February, 1884, said J. H. Foster had also in Portland, Oregon, about 5,000 barrels of flour, which was sold during the summer of 1884 and the proceeds of which said Sibson, Church & Co., receiver on account of said defendant, J. H. Foster.

Admit that the defendant J. H. Foster was, on February 6th, 1884, and ever since has been insolvent, and aver that long prior to said February 6th, 1884, said defendant, J. H. Foster, was insolvent.

Deny that all or any of the matters and things alleged in the plaintiff's complaint herein were at the time said conveyances were made or prior thereto or at all, except that defendant Foster
48 was the owner of the 7 pieces of property described in the complaint as being owned by him, known to or understood by these defendants or any of them, excepting also what is expressly admitted in this answer to have been known to them at said time.

Deny that said conveyances or any of them were made by said Foster or received by said defendants respectively with full or any knowledge or belief or in contemplation that said conveyances or any of them would or do hinder or delay the said Sibson, Church & Co. or W. C. Noon & Co. or any one else, from the collection of their just claims or dues, as set forth in the complaint or otherwise, or that said property or any part or portion thereof is held in secret or any trust for the defendant Foster or in hindrance or delay or in fraud of the rights or claims of the plaintiff herein or of others.

Admit that there is now no property of the defendant Foster out of which plaintiff can satisfy the judgment alleged to be his in the complaint herein.

Deny that the property described in plaintiff's complaint herein as being owned by the defendant Foster on February 6th, 1884, was on said date in the aggregate worth the sum of $110,000.00 or any more or greater sum than $56,000.00, or that the same is now worth much more or any more than $56,000.00.

Admit that the defendant- John A. Crawford and William Crawford and Ashby Pearce still hold said property under the respective conveyances, but deny that the defendant Foster is now in the possession thereof or any part thereof or in the enjoyment of the proceeds thereof or of any part thereof save and except tract No. 3 mentioned and described in the complaint herein, on which is a dwelling-house and which has been and is now occupied by the defendant J. H. Foster as the tenant of said John A. Crawford, and not otherwise.

49 Admit that all of the defendants are citizens of Oregon, but deny that the defendants Ashby Pearce or E. Walden are residents of Linn county, Oregon, or that they or either of them ever have been.

Admit that the defendants Foster, John A. Crawford, and William Crawford are residents of Linn county, Oregon, and have been since the date of said conveyances.

Admit that the defendants John R. Baltimore, W. H. Galtra, J. S. Liles, and E. Walden are the owners and holders of the various and several judgments against the defendant Foster as alleged and set forth in the plaintiff's complaint herein, and that said several judgments are for the amount alleged in said complaint, and that they were docketed in the records of the circuit court at Oregon for Linn county, but deny that said several judgments or any of them are existing liens or liens at all on all or any of the property of the defendant Foster within said county of Linn or elsewhere.

And these defendants deny all the said bill charged, without this, that there is any other matter, cause, or thing in the said plaintiff's said complaint contained material or necessary for these defendants to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is not true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to

be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

J. W. WHALLEY,
E. C. BRONAUGH,
H. H. NORTHUP, AND
PAUL R. DEADY,
Solicitors for Defendants Answering, J. H. Foster, A. Pearce, J. A. Crawford, Wm. Crawford.

50 STATE OF OREGON, } ss:
Linn County, }

We, J. H. Foster, John A. Crawford, William Crawford, and Ashby Pearce, each being duly severally sworn according to law, each say, depose, and swear that I am one of the defendants named in the foregoing and hereunto attached answer; that I have heard the same read and know the contents thereof, and that the statements, allegations, responses, and denials therein contained and made as of my own knowledge are true, and those made upon information and belief I verily believe to be true.

J. H. FOSTER.
A. PEARCE.
J. A. CRAWFORD.
WM. CRAWFORD.

Subscribed and sworn to before me this 18th day of August, A. D. 1886.

GEO. E. CHAMBERLAIN,
Notary Public.

51 STATE OF OREGON, } ss:
Multnomah County, }

Due service of the within answer is hereby accepted at Portland, Oregon, this 21 day of August, 1886, by receiving a copy thereof duly certified to as such by E. C. Bronaugh, one of said defendants' attorneys.

WILLIAMS, ACH AND WOODS,
Attorneys for Plaintiff.

Endorsed: Filed August 21, 1886. R. H. Lamson, clerk.

52 And afterwards, to wit, on the 1st day of September, 1886, there was duly filed in said court an answer of Baltimore *et al.* in words and figures as follows, to wit:

53 In the Circuit Court of the United States for the District of Oregon.

CHARLES A. NEAL, Plaintiff,
vs.
J. H. FOSTER, JOHN A. CRAWFORD, WILLIAM CRAWFORD, ASHBY Pearce, John R. Baltimore, J. S. Liles, E. Walden, and W. H. Galtra, Defendants.

Comes now the above-named defendants, John R. Baltimore, J. S. Liles, E. Walden, and W. H. Galtra, and for answer to the complaint of plaintiff filed herein admit that each and all of the allegations therein contained are true; and these defendants, further answering said complaint, allege—

That at all the times and dates herein mentioned prior to the 2nd day of April, A. D. 1884, the above-named defendant, J. H. Foster, was doing business in Albany, Linn county, Oregon, under the name and style of J. H. Foster & Co.

That on the 6th day of November, 1883, the defendant Foster, under said name and style of J. H. Poster & Co., for value received, made, executed, and delivered unto the defendant E. Walden his certain promissory note for the sum of $150.00, dated November 6th, 1883, due one day after date, and bearing interest at the rate of ten per cent. per annum from date until paid.

That afterward, to wit, on or about the 5th day of December, 1883, the said defendant Foster, under said name and style of J. H. Foster & Co., for value received, made, executed, and delivered unto said defendant E. Walden his certain other promissory note for the sum of $300.00, dated at Albany, December 5th, 1883, due one day after date, and bearing interest from date until paid at
54 the rate of ten per cent. per annum.

That afterwards, to wit, on the 27th day of March, 1886, said defendant E. Walden commenced an action at law in the circuit court of the State of Oregon for the county of Linn against said defendant Foster upon said two promissory notes, and that *said* proceedings were had in said action at law in said court that thereafter, to wit, on the 23rd day of February, A. D. 1886, said defendant E. Walden duly recovered judgment against defendant Foster for the sum of $551.80 and $17.30 costs, with accruing interest from said last-named date at the rate of 10% per annum; which said judgment was duly enrolled and docketed in the judgment docket of said circuit court last mentioned.

That the defendant Walden is now the owner and holder of said judgment, and that the same has not been paid nor any part thereof and no payments made therein.

These defendants further allege that on and prior to the 6th day of February, 1884, the defendant J. H. Foster was justly indebted to the defendant J. S. Liles, and that thereafter, to wit, on the 23rd day of February, 1884, as an evidence of such indebtedness, the defendant Foster, under said name and style of J. H. Foster & Co., made, executed, and delivered unto said defendant J. S. Liles his certain promissory note for the sum of $863.40, dated February

23rd, 1884, due one day after date, and bearing interest from date until paid at the rate of ten per cent. per annum.

That afterwards, to wit, on the 24th day of February, 1886, the defendant J. S. Liles commenced an action in the circuit court of the State of Oregon for the county of Lynn upon said last-mentioned promissory note, and afterwards, to wit, the 12th day of March, 1886, duly recovered judgment in said action in said last-
55 mentioned note against the defendant J. H. Foster for the sum of $1,039.80 and $9.95 costs and accruing interest thereon at the rate of ten por cent. per annum; which judgment was duly enrolled and docketed in the judgment docket of said court on said 12th day of March, 1886.

That said judgment has not been paid nor any payments made thereon, and that said defendant, J. S. Liles, is now the owner and holder thereof.

These defendants further allege—

That the defendant J. H. Foster, on or about the 12th day of December, 1881, under said name and style of J. H. Foster & Co., for value received, made, executed, and delivered unto the defendant John R. Baltimore his certain promissory note for $500.00, due one day after date, and bearing interest from date until paid at the rate of ten per cent. per annum.

That on or about the 22nd day of March, A. D. 1883, the said defendant, J. H. Foster, under said name and style of J. H. Foster & Co., for value received, made, executed, and delivered to said defendant, John R. Baltimore, his certain other promissory note for the sum of $1,000.00, dated March 22nd, 1883, due ninety days after date, and bearing interest at the rate of ten per cent. per annum from date until paid.

That on the 8th day of February, 1884, said defendant Baltimore commenced an action at law in the circuit court of the State of Oregon for the county of Linn against said defendant, J. H. Foster, on the two promissory notes last above mentioned, and that such proceedings were had in said action that afterwards, to wit, on the 10th day of March, 1884, the said defendant, John R. Baltimore, duly recovered judgment against defendant Foster in said last-mentioned action for the sum of $1,578.47 and $24.45 costs, with accru-
56 ing interest thereon from said 10th day of March, 1884, at the rate of 10 % per annum, and $56.00 attorney fees; that said judgment was duly enrolled and docketed in the judgment docket of said court, and has not been paid nor any part thereof, and that defendant Baltimore is now the owner and holder thereof.

These defendants further allege that on or about the 4th day of February, 1884, the defendant Foster, under said name and style of J. H. Foster & Co., for value received, made and executed and delivered unto one Alden Hulburt his certain promissory note for the sum of $210.00, dated at Albany, February 4th, 1884, due thirty days after date, and bearing interest from date until paid at the rate of 10 per cent. per annum.

That afterwards, to wit, on or about the 28th day of January, 1886, said Alden Hulburt, for value received, duly sold, assigned,

endorsed, and transfer-ed said promissory note to the defendant W. H. Goltra.

That on or about the fourth day of February, 1884, said defendant, J. H. Foster, under said name and style of J. H. Foster & Co., for value received, made, executed, and delivered unto one Austin Hulburt his certain promissory note for the sum of $368.70, dated February 4th, 1884, due thirty days after date, and bearing interest from date until paid at the rate of ten per cent. per annum.

That afterwards, to wit, on or about the 28th day of January, 1886, said Austin Hulburt, for value received, duly sold, assigned, and transfer-ed said promissory note to the defendant W. H. Goltra.

That on the said 4th day of February, 1884, the said J. H. Foster, under said firm name and style of J. H. Foster & Co., for value received, made, executed, and delivered to one W. J. Hulburt his certain promissory note for the sum of $207.50, dated at Albany,
February 4th, 1884, due thirty days after date, and bearing in-
57 terest from date until paid at the rate of ten per cent. per annum.

That afterwards, to wit, on or about the 28th day of January, 1886, said W. J. Hulburt, for value, duly sold, endorsed, and assigned said note to the defendant W. H. Coltra.

That on or about the 4th day of February, 1884, said defendant Foster, under said name and style of J. H. Foster & Co., for value received, made, executed, and delivered unto one Doyries Turner his certain promissory note for $124.12, due thirty days after date, dated Albany, February 4th, 1884, and bearing interest from date until paid at the rate of 10% per annum.

That afterwards, to wit, on or about the 28th day of January, 1886, said Doyries Turner, for value, duly sold, assigned, and endorsed said promissory note to the defendant W. H. Goltra.

That on or about the 4th day of December, 1882, the defendant Foster, for value received, under said name and style of J. H. Foster & Co., made, executed, and delivered to one Guseppe Mataese his certain promissory note for the sum of $400.00, payable to the order of said Guseppe Mataese one year after date, dated at Albany, Oregon, Dec. 4th, 1882, and bearing interest from date until paid at the rate of 8% per annum.

That afterwards, to wit, on or about the 28th day of January, 1886, said Gusseppe Mataese, for value, duly sold, assigned, and transferred said promissory note to the defendant W. H. Goltra.

That afterwards, to wit, on the 30th day of January, 1886, said defendant, W. H. Goltra, commenced an action at law in the circuit court of the State of Oregon for the county of Linn upon the five several promissory notes last above described, and that such proceedings were had in such action that the said defendant, Goltra, duly obtained a judgment therein against the defendant Foster on the 23rd day of February, 1886, for the sum of $1,096.77, and $19.20
costs and interest therein at the rate of 10% per annum, and
58 $527.93 and interest accruing at 8% per annum.

That said judgment was duly enrolled and docketed in the

judgment docket of said court in said last-mentioned date, and has not been paid nor any part thereof.

That on or about the 10th day of July, 1883, said defendant, J. H. Foster, for value received, made, executed, and delivered to one William Baltimore his certain promissory note, dated July 10th, 1883, due ninety days after date, for the sum of $900.00 and bearing interest from date until paid at the rate of 10% per annum.

That afterwards, to wit, on the 19th day of January, 1886, said William Baltimore, for value, duly sold, assigned, and endorsed said note to the defendant W. H. Goltra.

That on or about the 11th day of January, 1884, said defendant, J. H. Foster, under said name and style of J. H. Foster & Co., for value, made, executed, and delivered unto one H. R. Ramsey his certain promissory note for $695.13, dated on the 11th day of January, 1884, due thirty days after date and bearing interest at the rate of ten per cent. per annum from date until paid.

That afterwards and prior to January 19th, 1886, said Ramsey, for value, duly sold, assigned, and endorsed said note to one J. G. Powell, and that afterwards, to wit, on January 19th, 1886, said Powell, for value, sold, assigned, and endorsed said note to the defendant W. H. Goltra.

That on the 8th day of January, 1884, the defendant J. H. Foster, under said name and style of J. H. Foster & Co., for value, made, executed, and delivered unto the defendant W. H. Goltra his certain promissory note for the sum of $2,460.15, dated January 8th, 1884, due thirty days after date and bearing interest from date until paid at the rate of 10% per annum.

That on the 15th day of February, 1883, the defendant
59 Foster, under said name and style of J. H. Foster & Co., for value received, duly made, executed, and delivered unto one W. C. Morgan his certain promissory note for the sum of $1,400.00, dated on said 15th day of February, 1883, due one day after date and bearing interest at 9% per annum from date until paid.

That afterwards, to wit, on January 19th, 1886, said W. C. Morgan, for value, duly sold, assigned, and endorsed said promissory note to the defendant W. H. Goltra.

That on the 27th day of June, 1883, said defendant J. H. Foster, under said name and style of J. H. Foster & Co., for value received, duly made, executed, and delivered unto one C. T. Ingram his certain promissory note for the sum of $843.10, dated on the said 27th day of June, 1883, due sixty days after date and bearing interest from date until paid at the rate of 10% per annum.

That afterwards, to wit, on the 19th day of January, 1886, said C. T. Ingram, for value received, sold, assigned, endorsed, and transferred said note to the defendant W. H. Goltra.

That on or about the 21st day of January, 1884, said defendant Foster, under said name and style of J. H. Foster & Co., for value received, duly made, executed, and delivered unto said C. T. Ingram his certain other promissory note executed January 21st, 1884, and bearing said date for the sum of $725.70, due one day after date and bearing interest from date until paid at 10% per annum.

That afterwards, to wit, on January 19th, 1886, said Ingram, for value, duly sold, assigned, and transferred said note to the defendant W. H. Goltra.

That on the 26th day of September, 1882, the defendant Foster, under said name and style of J. H. Foster & Co., for value received, duly made, executed, and delivered unto one V. H. Caldwell
60 his certain promissory note for $800.00, dated September 26th, 1882, due one day after date and bearing ten per cent. interest per annum from date until paid.

That afterwards, to wit, on January 19th, 1886, said V. H. Caldwell, for value, duly sold, assigned, and transfer-ed said note to the defendant Goltra.

That on the 12th day of July, 1881, the defendant Foster, under said name and style of J. H. Foster & Co., for value, duly made, executed, and delivered unto one Thomas I. Anderson his certain promissory note for the sum of $1,000.00, of date July 12th, 1881, due one year after date, bearing interest from date until paid at the rate of ten per cent. per annum.

That afterwards, to wit, on January 19th, 1886, said Thomas I. Anderson, for value, duly sold, endorsed, and assigned said promissory note to the defendant W. H. Goltra.

That on the 16th day of December, 1882, said defendant Foster, under said name and style of J. H. Foster & Co., for value, duly made, executed, and delivered unto said Thomas I. Anderson his certain other promissory note for the sum of $600.00, dated December 16th, 1882, due one year after date and bearing interest from date until paid at the rate of ten per cent. per annum, and that on the 19th day of January, 1886, said Anderson, for value, duly sold, assigned, and transfer-ed said note to the defendant W. H. Goltra.

That on or about the 3rd day of February, 1883, the defendant Foster, under said name and style of J. H. Foster & Co., for value received, duly made, executed, and delivered unto said Thomas I. Anderson his certain other promissory note for $1,705.00 bearing date February 3rd, 1883, due one day after date and bearing interest from date until paid at the rate of ten per cent. per annum, and that said Anderson, for value, on the 19th day of January, 1886, sold, assigned, and transfer-ed said note to the defendant W. H. Goltra.

61 That at all the times and dates herein mentioned prior to the 16th day of July, 1884, W. S. Peters and J. W. Blain were partners, doing business under the firm name and style of Peters & Blain.

That on the 15th day of July, 1884, said W. S. Peters and one C. H. Stewart were ever, have been, and now are partners doing business under the firm name and style of Peters & Stewart.

That upon the 5th day of February, 1884, an account was stated between said firm of Peters & Blain and the defendant J. H. Foster, under said name and style of J. H. Foster & Co., and that upon such statement a balance of $198.00 was found due and owing from said defendant Foster to said Peters & Blain.

That thereafter, to wit, on or about the 15th day of July, 1884,

said Peters & Blain, for value, sold, assigned, and transfer-ed said demand against defendant Foster to said firm of Peters & Stewart; and that thereafter, to wit, on or about the 19th day of January, 1886, said Peters & Stewart, for value, duly sold, transfer-ed, and assigned said demand to the defendant W. H. Goltra.

That on or about the 28th day of December, 1883, the defendant J. H. Foster, under said name and style of J. H. Foster & Co., for value, duly made, executed, and delivered unto one J. G. Powell his certain promissory note for $223.35, due one day after date, dated December 28th, 1883, and bearing interest from date until paid at the rate of ten per cent. per annum.

That afterwards, to wit, on January 19th, 1886, said J. G. Powell, for value, duly sold, assigned, and endorsed said note to the defendant W. H. Goltra.

That on or about the 2nd day of January, 1883, said defendant Foster, under said name and style of J. H. Foster & Co., for value, duly made, executed, and delivered unto one Mrs. C. Blount his certain promissory note for the sum of $232.80, dated Jan-
62 uary 2nd, 1883, due one day after date and bearing interest from date until paid at the rate of ten per cent. per annum.

That afterwards, to wit, on the 19th day of January, 1886, said Mrs. C. Blount, for value, duly sold, assigned, and transfer-ed said note to the defendant W. H. Goltra.

That at all the times and dates herein mentioned the "Albany Farmers' Co." was and now is a corporation duly incorporated under the laws of the State of Oregon and having its principal office or place of business in the city of Albany, in Linn county, Oregon.

That on and prior to the 5th day of February, A. D. 1884, the defendant J. H. Foster was justly and legally indebted to said "Albany Farmers' Co.," and that on or about the 1st day of April, A. D. 1884, as an evidence of said indebtedness said defendant Foster, under said name and style of J. H. Foster & Co., made, executed, and delivered unto said "Albany Farmers' Co." his certain promissory note for the sum of $1,497.24, dated April 1st, 1884, due one day after date and bearing interest from date until paid at the rate of ten per cent. per annum.

That afterwards, to wit, on the 19th day of January, 1886, said "Albany Farmers' Co.," for value, duly sold, assigned, and endorsed said promissory note to the defendant W. H. Goltra.

That on the 23rd day of January, A. D. 1886, the defendant W. H. Goltra commenced an action at law in the circuit court of the State of Oregon for the county of Linn against the defendant J. H. Foster upon the thirteen several promissory notes last above described and this account or demand stated by said defendant Foster with said firm of Peters & Blain above mentioned.

That such proceedings were had in said cause in said court that thereafter, to wit, on the 6th day of February, 1886, the defendant W. H. Goltra duly obtained a judgment therein against said
63 defendant J. H. Foster for the sum of $14,266.34, with interest thereon from said 6th day of February, 1886, at the rate of 10% per annum; and the further sum of $1,302.20, with accruing

interest thereon from said last-mentioned date at 9% per annum; and the further sum of $196.86, with accruing interest from said last-mentioned date at 8% per annum; and the further sum of $330.00, attorneys' fees, and the costs and disbursements of said action, taxed at $24.30.

That said judgment was duly rendered and duly enrolled and docketed in the judgment docket of said court and has not been paid nor any part thereof.

That execution was duly issued before the commencement of this suit on the judgment of the defendant John R. Baltimore and upon the judgment of the defendant W. H. Goltra, last herein set forth, directed and delivered to the sheriff of Linn county, Oregon, the county where said defendant, J. H. Foster, resides and has resided during all the times herein mentioned, but each were returned wholly unsatisfied by said sheriff for the reason that said defendant Foster has no property in said county subject to execution.

That each and all of the judgments herein mentioned are a valid and subsisting lien upon all the real property of the defendant J. H. Foster in Linn county, Oregon.

That the real property described in plaintiff's complaint and conveyed as therein alleged was so conveyed by the defendant J. H. Foster to the defendant- John A. Crawford, William Crawford, and Ashby Pearce with the intent and for the purpose of hindering and delaying these defendants, as well as plaintiff and other creditors of the defendant Foster, in the collection of their respective claims and demands against said defendant Foster, and of cheating and defrauding these defendants, as well as plaintiff and other creditors of said defendant Foster, and that said real property was re-
64 ceived and is now held by said defendants, John A. Crawford, William Crawford, and Ashby Pearce, for said purpose and with said intent of hindering, delaying, cheating, and defrauding these defendants and other creditors of the defendant J. H. Foster, and that said property has been and is held in secret trust for defendant Foster and in hinderance, delay, and in fraud of the rights of these defendants.

That defendant Foster has no other property out of which these defendants can satisfy their judgments hereinbefore mentioned, and he is otherwise wholly insolvent, and that these defendants have no plain, speedy, or adequate remedy at law.

Wherefore these defendants pray that the prayer of plaintiff's complaint be granted, and for all such other and further relief as to the court may seem equitable.

WEATHERFORD & BLACKBURN AND
WOLVERTEN & IRVINE,
Attorneys for Defendants Liles, Baltimore, Walden, & Goltra.

65 STATE OF OREGON, }
County of Linn, } *ss:*

I, W. H. Goltra, being first duly sworn, say that I am one of the defendants above named, and that the foregoing answer is true, as I verily believe.

W. H. GOLTRA.

Subscribed and sworn to before me this — day of ——, 1886.

O. H. IRVINE,
Notary Public.

Endorsed: Filed September 1, 1886. R. H. Lamson, clerk.

66 And afterwards, to wit, on the 10th day of September, 1886, there was duly filed in said court a replication to answer of Foster *et al.* in words and figures as follows, to wit:

67 In the Circuit Court of the United States for the District of Oregon. In Equity.

CHARLES A. NEAL, Plaintiff,
vs.
JAMES H. FOSTER, JOHN A. CRAWFORD, WILLIAM CRAWFORD, Ashby Pearce, John R. Baltimore, J. S. Liles, E. Walden, and W. H. Galtra, Defendants.

The replication of Charles A. Neal, plaintiff, to the answer of J. H. Foster, John A. Crawford, William Crawford, and Ashby Pearce, defendants.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

GEO. H. WILLIAMS,
HENRY ACH &
C. E. S. WOOD,
Solicitors for Plaintiff.

68 UNITED STATES OF AMERICA, *District of Oregon*, } ss:

I, —— ——, one of the attorneys for the —— in the above-entitled cause, do hereby certify that I have compared the foregoing copy of — with the original thereof, and that the same is a full, true, and correct copy of such original and of the whole thereof.

—— ——,
Attorney for —— ——.

Due service of the within replication by certified copy, as provided by law, is hereby admitted at Portland, Or., 10th September, 1886.

E. C. BRONAUGH,
Of Attorneys for Defendants J. H. Foster, John A. Crawford, William Crawford, and Ashby Pearce.

Endorsed: Filed September 10, 1886. R. H. Lamson, clerk.

69 And afterwards, to wit, on Thursday, the 7th day of October, 1886, the same being the 4th judicial day of the regular October term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

70 In the Circuit Court of the United States for the District of Oregon.

CHARLES A. NEAL
vs.
J. H. FOSTER, JOHN A. CRAWFORD, WILLIAM CRAWFORD, Ashby Pearce, John R. Baltimore, J. S. Liles, E. Walden, and W. H. Goltra. } No. 1258.

OCTOBER 7, 1886.

Now, at this day, on motion of Mr. C. E. S. Wood, of counsel for the plaintiff, it is ordered that this suit be, and the same is hereby, referred to Mr. George H. Durham, one of the masters of this court, to take the testimony therein and to report to this court his findings of fact and his conclusions of law thereon.

LORENZO SAWYER,
Circuit Judge.

Endorsed: Filed October 7th, 1886. R. H. Lamson, clerk, R. B. Lamson, deputy clerk.

71 And afterwards, to wit, on the 29th day of April, 1887, there was duly filed in said court a notice in words and figures as follows, to wit:

72 In the Circuit Court of the United States for the District of Oregon.

CHARLES A. NEAL, Complainant,
vs.
JAMES H. FOSTER, JOHN A. CRAWFORD, WILLIAM CRAWFORD, ASHBY PEARCE, and Others, Defendants. } No. —.

To Charles A. Neal, the above-named complainant, and Williams, Ach and Wood, his solicitors:

You and each of you are hereby notified that at 10 o'clock a. m., on Friday, May 6th, 1887, the defendants above named will present to the above-entitled honorable court their application, a copy of which is herewith served upon you, and will move said court to then or at such other time as the court may appoint — enquire and examine into the truth and grounds of the affidavit upon which this cause was removed into said court from the State court and to remand this suit back to said State court.

The affidavits accompanying said application you will find filed therewith among the papers in this cause in said U. S. court.

WHALLEY, BRONAUGH & NORTHUP,
Solicitors for Defendants.

73 STATE OF OREGON, } ss:
County of Multnomah, }

Due service of the within notice is hereby accepted at Portland, Oregon, this 29th day of April, 1887, by receiving a copy thereof duly certified to as such by E. C. Bronaugh, counsel for defendants named.

WILLIAMS, ACH & WOOD,
Attorneys for Plaintiff.

Endorsed: Filed April 29th, 1887. R. H. Lamson, clerk.

74 And afterwards, to wit, on the 29th day of April, 1887, there was duly filed in said court a motion to remand in words and figures as follows, to wit:

75 In the Circuit Court of the United States for the District of Oregon.

CHARLES A. NEAL, Plaintiff,
vs.
JAMES H. FOSTER, JOHN A. CRAWFORD, WILLIAM CRAWford, Ashby Pearce, John R. Baltimore, J. S. Lilles, E. Walden, and W. H. Goltra, Defendants. } No. —.

Now, on this day, comes James H. Foster, John A. Crawford, William Crawford, and Ashby Pearce, defendants in the above-entitled suit, and apply to the court to examine into the truth and grounds of the affidavit as to the existence of prejudice and local influence adverse to plaintiff's rights, upon which affidavit this cause was removed from the State court, and upon such examination to remand this cause back to said State court, according to the provision of the second section of the act of Congress approved March 3, 1887; and defendants allege as grounds for this motion that said affidavit was when made and still is untrue, for the reason that there never has existed, in point of fact, any such local prejudice or influence adverse to plaintiff's rights as is alleged in said affidavit for removal, which is manifested by the counter-affidavits hereinwith presented to the court and as also appears by evidence taken before the master in this cause whereby the prejudice, if any there be, is shown to be against these defendants and not against plaintiff, and because, further, this is a suit in equity to be tried not by a jury but by the judge of said State court, who is not prejudiced for or against
76 either of the parties and who, from his personal acquaintance with many of the witnesses, is favorably situated to weigh the worth of their testimony.

WHALLEY, BRONAUGH & NORTHUP,
Solicitors for Defendants Moving.

STATE OF OREGON, } ss:
County of Multnomah, }

Due service of the within motion is hereby accepted, at Portland, Oregon, this 29th day of April, 1887, by receiving a copy thereof

duly certified to as such by E. C. Bronaugh, counsel for defendants named.

WILLIAMS, ACH & WOOD,
Attorneys for Plaintiff.

Endorsed: Filed April 29th, 1887. R. H. Lamson, clerk.

77 And afterwards, to wit, on the 29th day of April, 1887, there was duly filed in said court an affidavit of J. H. Foster in words and figures as follows, to wit:

78 In the Circuit Court of the United States for the District of Oregon.

CHARLES A. NEAL, Plaintiff,
vs.
JAMES H. FOSTER, JOHN A. CRAWFORD, WILLIAM CRAWFORD, Ashby Pearce, W. H. Goltra, John R. Baltimore, J. S. Lisle, and E. Walden, Defendants.

STATE OF OREGON,
County of Linn, } *ss.*:

I, James H. Foster, being first duly sworn, depose and say that I am one of the defendants above named; that I have resided at Albany, in Linn county, Oregon, for and during the twenty years last past and now reside there; that I am well acquainted with the people throughout said Linn county and with the officers and judge of the circuit court held in and for said Linn county and with judges of the supreme court of the State; that the plaintiff, Charles A. Neal, is a total stranger to the people of said Linn county and to the judge of the circuit court of the State of Oregon for said Linn county and to judges of the supreme court of the said State of Oregon; that the people of said Linn county have no prejudices against said Charles A. Neal, either personally or because he resides in the State of Illinois or out of Oregon, nor has the judge of said circuit court of the State of Oregon for Linn county or the judges of the supreme court of the State of Oregon any prejudice against said Charles A. Neal personally or because he resides in the
79 State of Illinois or out of the State of Oregon; that in truth and in fact said Charles A. Neal was not known to exist by the people of Linn county or any of them or by the said judges of said State court or any of them until he filed his complaint in the above-entitled suit, as I verily believe and have been informed and have reason to know and that there is no local prejudice against him or in favor of the defendants in Linn county or in the State courts of the State of Oregon.

J. H. FOSTER.

Subscribed and sworn to before me this 28th day of April, 1887.
H. H. HEWITT,
Notary Public for Oregon.

Endorsed: Filed April 29th, 1887. R. H. Lamson, clerk.

80 And afterwards, to wit, on the 29th day of April, 1887, there was duly filed in said court an affidavit of William Crawford in words and figures as follows, to wit:

81 In the Circuit Court of the United States for the District of Oregon.

CHARLES A. NEAL, Plaintiff,
vs.
JAMES H. FOSTER, JOHN A. CRAWFORD, WILLIAM CRAWFORD, Ashby Pearce, W. H. Goltra, John R. Baltimore, J. S. Liles, and E. Walden, Defendants.

STATE OF OREGON, *County of Linn,* } *ss*:

I, William Crawford, being first duly sworn, say that I am one of the defendants in the above-entitled suit; that I reside in Albany, in Linn county, Oregon, and have resided there during the twenty years last past; that I am well acquainted with the people of Linn county and with the officers and judge of the circuit court of the State of Oregon; that I do not know Charles Neal, the plaintiff above named; that I never knew or heard of him until the commencement of this suit; that I am informed and believe that said Charles A. Neal has never been in Linn county, Oregon; that he is not acquainted with the people of the county or the judge or officers of the State courts nor any of them, and that they are not acquainted with him nor did they or any of them know that such a person existed until the commencement of this suit; that the people of this county—that is, Linn county, in the State of Oregon, have no local or other prejudice for or against said Charles A. Neal or for
82 or against the defendants or any of them, nor has the judge of the circuit court of the State of Oregon for Linn county any prejudice, local or otherwise, against said Charles A. Neal or in favor of the defendants or any of them.

WM. CRAWFORD.

Subscribed and sworn to before me this 28th day of April, 1887.

H. H. HEWITT,
Notary Public for Oregon.

Endorsed: Filed April 29th, 1887. R. H. Lamson, clerk.

83 And afterwards, to wit, on the 29th day of April, 1887, there was duly filed in said court an affidavit of D. S. Smith in words and figures as follows, to wit:

84 In the Circuit Court of the United States for the District of Oregon.

CHARLES A. NEAL, Plaintiff,
vs.
JAMES H. FOSTER, JOHN A. CRAWFORD, WILLIAM CRAWFORD, Ashby Pearce, W. H. Goltra, John R. Baltimore, J. S. Lisle, and E. Walden, Defendants.

STATE OF OREGON, *County of Linn*, } *ss*:

I, D. S. Smith, being first duly sworn, say that I am the duly elected, qualified, and acting sheriff of Linn county, in the State of Oregon; that I have resided in Albany, in said Linn county, during the ten years last past; that I am well acquainted with the people of Linn county and with the judge of the circuit court of the State of Oregon for Linn county; that I have acted in the capacity of sheriff and deputy sheriff in an for said Linn county during a large portion of the five years last past; that I never heard of Charles A. Neal, the plaintiff above named, until the above-entitled suit was commenced; that he is an entire stranger to the people of this county; that I am informed and believe the said Charles A. Neal has never been in Linn county, Oregon, nor does know any person therein nor does any of the people therein know him either personally or by reputation; that he never has had any dealings with any of the people of said Linn county nor has he ever at any time owned any property therein or paid any taxes therein, with the exception that in the above-entitled suit it is claimed he purchased certain
85 judgments against James H. Foster & Co., and that he is the owner thereof, which judgments are of record in Linn county; that, to my knowledge, there is no prejudice among the people of Linn county against said Charles A. Neal or in favor of the defendants herein or any or either of them either personally or because said Neal is a resident of the State of Illinois or is not a resident of this State or otherwise; that I am informed and believe that said Charles A. Neal is a total stranger to the judge of the circuit court of the State of Oregon for Linn county and to each and all of the judges of the supreme court of the State of Oregon, and that said judges and all of them are free from any prejudice against said Charles A. Neal or in favor of the defendants or any of them either on account of the residence of said Neal being out of this State or otherwise or for any other reason, and that in truth and in fact no local or other prejudice exists against said Charles A. Neal or in favor of the defendants or either of them among the people of Linn county or the said judges of the State courts of this State.

D. S. SMITH.

Subscribed and sworn to before me this 28th day of April, 1887.
J. P. GALBRAITH,
County Clerk.

Endorsed: Filed April 29th, 1887. R. H. Lamson, clerk.

86 And afterwards, to wit, on the 29th day of April, 1887, there was duly filed in said court an affidavit of J. P. Galbraith in words and figures as follows, to wit:

87 In the Circuit Court of the United States for the District of Oregon.

CHARLES A. NEAL, Plaintiff,
vs.
JAMES H. FOSTER, JOHN A. CRAWFORD, WILLIAM CRAWFORD, Ashby Pearce, W. H. Goltra, John R. Baltimore, J. S. Lisle, and E. Walden, Defendants.

STATE OF OREGON,
County of Linn, } *ss:*

I, J. P. Galbraith, being first duly sworn, say that I am now and have been for the ten years last past a resident of Linn county, Oregon; that I am now the duly elected, qualified, and acting county clerk of Linn county, Oregon; that I am well acquainted with the people of the said Linn county; that Charles A. Neal, the plaintiff above named, is wholly unknown in said Linn county; that said Charles A. Neal *existed* was not known to the people of Linn county or to any of them until the above-entitled suit was commenced in the circuit court of the State of Oregon for Linn county, and that all the people of this county or any of them now know of or about said Neal is that a suit was commenced here in the name of one Charles A. Neal, who is claimed or said to be a resident of the State of Illinois; that there is no local or other prejudice among the people of Linn county either for or against said Charles A. Neal or for or against the above-named defendants or any of them; that I am informed and believe that Charles A. Neal is not personally or by reputation known to the judge of the circuit court of the State of Oregon or to the judge of the su-
88 preme court of said State or to any or either of them, and that they have not nor has either of them any local or other prejudice against said Charles A. Neal or in favor of the above defendants or any of them.

J. P. GALBRAITH.

Subscribed and sworn to before me this 28th day of April, 1887.
H. H. HEWITT,
Notary Public for Oregon.

Endorsed: Filed April 29th, 1887. R. H. Lamson, clerk.

89 And afterwards, to wit, on the 29th day of April, 1887, there was duly filed in said court an affidavit of John A. Crawford in words and figures as follows, to wit:

90 In the Circuit Court of the United States for the District of Oregon.

CHARLES A. NEAL, Plaintiff,
vs.
JAMES H. FOSTER, JOHN A. CRAWFORD, WILLIAM CRAWFORD, Ashby Pearce, W. H. Goltra, John R. Baltimore, J. S. Lisle, and E. Walden, Defendants.

STATE OF OREGON, *County of Linn*, } *ss:*

I, John A. Crawford, being first duly sworn, say that I am one of the defendants above named; that I have resided in Linn county during the twenty years last past, and now reside there; that I am well acquainted with the people of Linn county and with the judge of the circuit court of the State of Oregon for Linn county; that I do not know and never did know Charles A. Neal, the plaintiff above named, and that I never heard of him until the above-entitled suit was commenced; that since the commencement of the suit I made a great many enquiries about him, trying to learn who he was, of the people of Linn county, especially in and about court, but I found no one who had ever known, seen, or heard of him before, nor was I able to learn who he was or where he lived until the deposition of Mr. Ladd was taken in this case a few months since; that said Charles A. Neal is wholly unknown to the people and to the judges of the State courts above mentioned, and that no local prejudice or other prejudice among the people of Linn county or among the judges of State courts or any or either of them against said
91 Charles A. Neal or in favor of the defendants or either of them exists.

JOHN A. CRAWFORD.

Subscribed and sworn to before me this 28th day of April, 1887.
H. H. HEWITT,
Notary Public for Oregon.

Endorsed: Filed April 29, 1887. R. H. Lamson, clerk.

92 And afterwards, to wit, on Monday, the 16th day of May, 1887, the same being the 18th judicial day of the regular April term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

93 In the Circuit Court of the United States for the District of Oregon.

CHARLES A. NEAL
vs.
JAMES H. FOSTER *et al.* } No. 1258.

MAY 16, 1887.

Now, at this day, comes the plaintiff, by Mr. C. E. S. Wood, of coun-

sel, and the defendants, by Mr. Earl C. Bronaugh, of counsel; and by consent of parties it is ordered that the hearing of the motion to remand herein be, and the same is hereby, continued until Monday, May 23, 1887, provided counsel for the plaintiff is served with a copy of the affidavits on which said motion is made at least five days prior thereto.

DEADY, *J.*

Endorsed: Filed May 16, 1887. R. H. Lamson, clerk, by R. B. Lamson, deputy clerk.

94 And afterwards, to wit, on the 23d day of May, 1887, there was duly filed in said court an affidavit of W. H. Goltra in words and figures as follows, to wit:

95 In the Circuit Court of the United States for the District of Oregon.

CHARLES A. NEAL, Plaintiff,
vs.
JAMES H. FOSTER, JOHN A. CRAWFORD, WILLIAM CRAWFORD, Ashby Pearce, W. H. Goltra, John R. Baltimore, J. S. Lisle, and E. Walden, Defendants.

STATE OF OREGON, *County of Linn,* } *ss:*

I, W. H. Goltra, being first duly sworn, say I am one of the defendants in the above-mentioned suit; that I am now and for many years have been a resident of the city of Albany, Linn county, Oregon, and am well acquainted with John A. Crawford, who is also one of the defendants and the active party in defending said suit; that it has been and is now generally understood that said John A. Crawford has great influence with the judge of the circuit court of the State of Oregon for the county of Linn, and that he has been in the habit of boasting that he was always successful in all of his litigation before said court.

That one of the judges of the supreme court of the State of Oregon has been for years the legal adviser and attorney for said Crawford, and that with regard to the transfer of property, to set aside which this suit is brought, he was the legal adviser of both Foster and Crawford and prepared the papers transfer-ing said property, and has also appeared as the attorney of said parties in some
96 litigation relative thereto.

W. H. GOLTRA.

Sworn to and subscribed before me this 18th day of May, 1887.
D. R. N. BLACKBURN,
Notary Public for Oregon.

Endorsed: Filed May 23rd, 1887. R. H. Lamson, clerk.

97 And afterwards, to wit, on the 23d day of May, 1887, there was duly filed in said court an affidavit of W. V. Baltimore in words and figures as follows, to wit:

98 In the Circuit Court of the United States for the District of Oregon.

CHARLES A. NEAL, Plaintiff,
vs.
JAMES H. FOSTER, JOHN A. CRAWFORD, WILLIAM CRAWFORD, Ashby Pearce, W. H. Goltra, John R. Baltimore, J. S. Lisle, and E. Walden, Defendants.

STATE OF OREGON, *County of Linn*, } *ss*:

I, W. V. Baltimore, being first duly sworn, say I am now and for several years last past have been a resident of Linn county, in the State of Oregon; that I am well acquainted with John A. Crawford, one of the defendants in the above-entitled suit and the active party defending the same. I am also well acquainted with James H. Foster, another of said defendants; that it has been and is now generally understood that said John A. Crawford has great influence with the judge of the circuit court of the State of Oregon for the county of Linn, and that he has been in the habit of boasting that he was always successful in all of his litigation before said court, and I have heard it frequently remarked that the creditors of said James H. Foster would have no show of success in any litigation before said court, and it is generally believed that said court is prejudiced in favor of said John A. Crawford and James H. Foster.

That one of the judges of the supreme court of the State of
99 Oregon has been for years the legal adviser and attorney for said Crawford, and in respect to the transfer of property to set aside which this suit is brought he was the legal adviser of both Foster and Crawford and prepared the papers transferring said property, and has also appeared as the attorney of said parties in some litigation relative thereto.

W. V. BALTIMORE.

Sworn to and subscribed before me this 19th day of May, 1887.

D. R. N. BLACKBURN,
Notary Public for Oregon.

Endorsed: Filed May 23, 1887. R. H. Lamson, clerk.

100 And afterwards, to wit, on the 23d day of May, 1887, there was duly filed in said court an affidavit of T. I. Anderson in words and figures as follows, to wit:

101 In the Circuit Court of the United States for the District of Oregon.

CHARLES A. NEAL, Plaintiff,
vs.
JAMES H. FOSTER, JOHN A. CRAWFORD, WILLIAM CRAWFORD, Ashby Pearce, W. H. Goltra, John R. Baltimore, J. S. Lisle, and E. Walden, Defendants.

STATE OF OREGON, *County of Linn,* } *ss:*

I, T. I. Anderson, being first duly sworn, say that I am and have been for thirty years and more a resident of said county and State; that I am acquainted with John A. Crawford, one of the above-named defendants and who I understand is the principal person defending this suit; that it is understood and it is a frequent remark in the community that said Crawford has great influence with the circuit judge of Linn county, Oregon; that he has had more litigation than most any other citizen in Linn county, and it is the general remark that he never loses a case in said court, and I have frequently heard that he has boasted that it would do no good for the creditors of James H. Foster to commence suit, as he was always successful before the court in all of his litigation; that he seems to have more influence in said court than the ordinary litigant.

That the judges of the supreme court this affiant believes to be fair men, but one of said judges has been for a number
102 of years the confidential adviser and attorney of said Crawford's and of J. H. Foster, and appeared in court for them; that if there was fraud in the transfers made, as alleged in said suit, the judge had some knowledge thereof, as the transfers were made by him, as he stated on the witness stand in a suit in Albany and made at his house.

That I do not think the plaintiff in the above-entitled suit could be on equal terms before the judge of said circuit court, he being a stranger and the other being, as is claimed, on intimate terms and able to win all cases.

That I believe from what I have seen in said court that said judge is prejudiced in favor of certain of the defendants above named, to wit, J. A. Crawford, William Crawford, and J. H. Foster.

T. I. ANDERSON.

Sworn to and subscribed before me this 18th day of May, 1887.

D. R. N. BLACKBURN,
Notary Public for Oregon.

Endorsed: Filed May 23, 1887. R. H. Lamson, clerk.

103 And afterwards, to wit, on the 23d day of May, 1887, there was duly filed in said court an affidavit of Wm. C. Morgan in words and figures as follows, to wit:

104 In the Circu-t Court of the United States for the District of Oregon.

CHARLES A. NEAL, Plaintiff,
vs.
JAMES H. FOSTER, JOHN A. CRAWFORD, WILLIAM CRAWFORD, Ashby Pearce, and W. H. Gottra, John R. Baltimore, J. S. Lisle, and E. Walden, Defendants.

STATE OF OREGON, *County of Linn*, } *ss*:

I, William C. Morgan, being first duly sworn, say that I am a resident of Linn county, State of Oregon, and have been for some twenty years, and reside within two miles from the city of Albany and am acquainted with a great many people in Linn county; that I am acquainted with John A. Crawford, one of the defendants in the above-entitled suit, who, I understand, is the principal defendant making the defense therein.

That it is generally understood and is frequently remarked in the community that said Crawford has more influence with the circuit judge of and for Linn county than other litigants, and that he has more litigation than most any other citizen in Linn county, and it is the general understanding and remark in this part of the county that he, John Crawford, never loses a case in said circuit court. I have heard the said Crawford say that he was never beaten in said court in any suit or action, and I have frequently heard the remark that it would do no good for the creditors of J. H. Foster to commence suit to set aside the sales as fraud made by Foster to him, said Crawford, as he was always successful before the courts in all of his litigations; that said John A. Crawford and J. H.
105 Foster appear to have more influence with said court than other litigants.

That the judges of the supreme court this affiant knows not, except one, who formerly resided in Albany, and I believe does now; that the said judge has for a long time been the attorney for said Crawford and appeared in court for him as well as J. H. Foster, and, as I understand, made the transfers and papers for which I understand this suit is made to set aside, as I learned from his evidence in a case tried in Albany, Oregon, wherein said judge testified; that I do not think the plaintiff in the above-entitled suit would be on equal terms before the judge of said circuit court, he being a stranger with the principal defendants, who are well acquainted and on good terms with said court.

That I believe from what I have seen and heard in said court that said judge is predjudiced in favor of certain of the defendants above named, to wit, John A. Crawford, J. H. Foster, and William Crawford.

W. C. MORGAN.

Sworn to and subscribed before me this 18th day of May, 1887.

D. R. N. BLACKBURN,
Notary Public for Oregon.

Endorsed: Filed May 23d, 1887. R. H. Lamson, clerk.

106 And afterwards, to wit, on the 23d day of May, 1887, there was duly filed in said court an affidavit of A. B. McIlwain in words and figures as follows, to wit:

107 In the Circuit Court of the United States for the District of Oregon.

CHARLES A. NEAL, Plaintiff,
vs.
JAMES H. FOSTER, JOHN A. CRAWFORD, WILLIAM CRAWFORD, Ashby Pearce, W. H. Goltra, John R. Baltimore, J. S. Lisle, and E. Walden, Defendants.

STATE OF OREGON, } *ss:*
County of Linn, }

I, A. B. McIlwain, being first duly sworn, say: I am now and for several years last past have been a resident of Albany, in the county of Linn and State of Oregon, and engaged in the mercantile business in said city; that I am acquainted with John A. Crawford, one of the above-named defendants, and who, I understand, is the principal person defending said suit; that it has been and is now generally understood that he has great influence with the judge of the circuit court of the State of Oregon for the county of Linn, and this said court is prejudiced in his favor in any litigation to which said Crawford is as party.

A. B. McILWAIN.

Sworn to and subscribed before me this 19th of May, 1887.
D. R. N. BLACKBURT,
Notary Public for Oregon.

Endorsed: Filed May 23, 1887. R. H. Lamson, clerk.

108 And afterwards, to wit, on Wednesday, the 15th day of June, 1887, the same being the 35th judicial day of the regular April term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

109 In the Circuit Court of the United States for the District of Oregon.

CHARLES A. NEAL
vs.
JAMES H. FOSTER, JOHN A. CRAWFORD, WILLIAM CRAWford, Ashby Pearce, John R. Baltimore, J. S. Lisles, E. Walden, and M. H. Galtra. } No. 1258.

JUNE 15, 1887.

This cause was heard upon the motion filed by the defendants to remand this cause to the State circuit court, from whence it came,

and was argued by Mr. George H. Williams and Mr. C. E. S. Wood, of counsel for the plaintiff, and by Mr. Earl C. Bronaugh, of counsel for the defendants. On consideration whereof it is ordered that said motion be, and the same is hereby, denied.

DEADY, *J.*

Endorsed: Filed June 15, 1887. R. H. Lamson, clerk.

110 And afterwards, to wit, on the 15th day of June, 1887, there was duly filed in said court an opinion by the court in words and figures as follows, to wit:

111 U. S. Circuit Court, District of Oregon.

WEDNESDAY, *June* 15, 1887.

CHARLES A. NEALE
v.
JAMES H. FOSTER, J. A. CRAWFORD, WM. CRAWFORD, Ashby Pearce, John R. Baltimore, J. S. Sites, E. Walden, and W. H. Goltra. } No. 1258.

Suit in equity to set aside fraudulent conveyances.

(1.) Application to remand cause.—The plaintiff, being the owner and assignee of a non-negotiable contract, namely, two judgments for money, brought suit in the State court to set aside certain alleged fraudulent conveyances by the judgment debtor and to subject the lands described therein to the satisfaction of said judgments, and then caused the suit to be removed to this court, stating in his petition therefor that the plaintiff is a citizen of Illinois and the defendants citizens of Oregon, and that on account of prejudice and local influence he could not obtain justice in the State court, in support of which latter statement he filed an affidavit, as required by subdivision 3 of § 639 of the R. S. On April 29, and after the case had been put at issue by a replication to the defendants' answer and the same had been referred to the master to take the testimony and find the facts and conclusions of law arising thereon, and after the testimony was closed and the case was awaiting the convenience of the master for final argument before him, the defendants applied to the court, under § 2 of the act of 1887 (24 Stat., 553), to examine into the truth of said affidavit, alleging that the same is untrue, on which issue affidavits were filed by the parties: Held, (1) That the proceeding authorized by the act of 1887, whereby this court is called upon to pass on the fitness of a State judge to try a particular case, is indelicate and inexpedient; (2) the application is too late, not having been made before the trial or hearing commenced before the master; and (3) the cause was removable on the ground of the diverse citizenship of the parties irrespective of the question of prejudice and local influence, and therefore the application to remand is denied without passing on the same.

DEADY, *J.*:

This suit was commenced in the circuit court of the State for Linn county on July 1, 1886, and on July 6 was removed, on the petition of the plaintiff, to this court.

It appears from the complaint that the suit is brought to set aside certain conveyances of real property situate in said county and made by the defendant Foster when in failing circumstances to the defendants Pearce and John A. and William Crawford, of said county, and subject the same to the payment of two certain judgments, equal in value to $15,966, with interest from March 8, 1886, of which the plaintiff is, for a valuable consideration, the assignee of certain citizens of Oregon.

The petition for removal states that the plaintiff is a citizen and resident of Illinois, and the defendants are citizens of Oregon, and that the controversy in said suit is between citizens of different States; that the plaintiff also desires to remove said suit under subdivision 3 of § 639 of the Revised Statutes, and has filed the affidavit required for that purpose.

The affidavit is made by the plaintiff's attorney, and states that the affiant and the plaintiff "have reason to believe and do believe that from prejudice and local influence" the latter "will not be able to obtain justice in said State court."

On August the 21st the defendants answered, and on September the 10th the cause was put at issue by the filing of a replication thereto, and on October the 7th the case was referred to a master to take the testimony therein and report his findings of fact and conclusions of law thereon.

The testimony has long been closed and the case is awaiting the convenience of the master for final argument before him.

On April the 29th the defendants made an application under § 2 of the act of March 3, 1887 (24 Stat., § 553), to examine into the truth and grounds of said affidavit, alleging therein that the same was untrue, and in support of such allegation filed the affidavits of the sheriff and clerk of the county and the defendants Foster and John A. and William Crawford. The plaintiff, having a day to reply to the same, filed the affidavits of the defendants Baltimore and Goltra, who have unsatisfied judgments against Foster, and of three other respectable citizens of the county.

The affidavits for the defendants are simply to the effect that the plaintiff is unknown in the county, and the affiants are not aware of any prejudice against him, either by the people or the judges of the courts.

The affiants for the plaintiff state that the judge of the circuit court of Linn county is regarded as generally prejudiced in favor of the principal defendant, John A. Crawford, and that the plaintiff is not likely to have a fair trial in that court against said defendant, and also that one of the three judges of the supreme court of the State is a resident of said county and acted as the attorney and adviser of Foster and Crawford in the preparation and execution of the alleged fraudulent conveyances.

This case is a good illustration of the indelicacy and inexpediency of the proceeding authorized by the act of 1887, whereby this court may be required to pass upon the fitness of a State judge to try a particular case.

The affidavits of the defendants amount to nothing. Of course there is no prejudice in the county against the plaintiff personally, for he is unknown to the community; but there may be a prejudice in favor of his adversary that would be as much in his way of obtaining justice as a prejudice against himself. The prejudice and local influence mentioned in the statute is not merely a prejudice or influence primarily existing against the party seeking a removal. It includes, as well, that prejudice in favor of his adversary which may arise from the fact that he is long resident and favorably known in the community. Then there is the element of local influence, which implies that in a controversy between a stranger and resident parties having the power through wealth, business, or social relations or personal popularity, or all combined, to direct or materially aid in the direction of political parties and control the selection of public officers and the distribution of party emoluments the former may be at a great disadvantage, if not powerless, to assert his right.

And this implication is no unusual reflection on any particular community or persons. On the contrary, it is such a well understood and recognized frailty of human nature that jurisdiction of controversies between citizens of different States was expressly given by the Constitution to the National Government, and this, not only as a means of doing justice, but of facilitating the trade and intercourse between the people of the several States, which the Constitution was formed, for more than any other purpose, to protect and promote.

Neither is it unreasonable that in a case like this, where a stranger from another State is seeking to set aside conveyances made in favor of local creditors of long standing and high character in the community by a failing debtor of like standing and character, that there should be prejudice and local influence, not against the plaintiff personally, but against his cause and in favor of his adversaries.

How far this influence and local prejudice might extend, and whether it would consciously or unconsciously influence the mind and action of the court, would depend largely on the temper and character of the judge.

Counsel for the defendants maintain that, admitting there is a prejudice and local influence in Linn county in favor of the defendants in this case, the case being an equity one to be decided by the court without a jury, there is no reason to think or believe that the circuit judge would be affected or influenced by it in the least degree.

On the other hand, counsel for the plaintiff contends that, on the proofs and in the nature of things, there is a strong prejudice and influence in Linn county in favor of the defendants in this controversy, and that the circuit judge, who holds his office by the good

will of this community and is a particular friend of the principal defendant, may be and probably will be more or less unconsciously affected in his mental vision and conclusions by these circumstances.

I have been thus at some pains to state the nature of this application and the proceedings thereon, more particularly for the purpose of correcting a gross misrepresentation that got into the newspapers at the time concerning what was said by counsel for the plaintiff about the judge of the circuit court for Linn county.

The fact is nothing whatever was said against his integrity, and counsel was careful to disclaim any such purpose, and I deem it due to myself to say that if anything of the kind had been attempted I would have considered it my duty to check it at once.

And now, having said this much on this phase of the subject, I propose to dispose of the application without passing on the question of prejudice and local influences.

In the first place, in my judgment, it comes too late. The statute provides that it may be made "at any time before the trial." Ever since this case was referred to the master with directions to take the testimony and find the facts and conclusions of law arising thereon, it has been on trial. The proceeding and the effect of it is in all respects similar to a trial before a referee under the code. In the second place, the cause was removal to this court and was so removed under § 2 of the act of 1875, as a suit in which there is a controversy between citizens of different States. Although the plaintiff, as assignee of a non-negotiable contract, could not have brought this suit in this court in the first instance, because his assignors, who were citizens of Oregon, could not, yet he might remove it here from the State court. This has been settled by the Supreme Court of the United States in Claflin *v.* Commonwealth Insurance Co. (110 U. S., 81), in which it was distinctly held that the restrictions on the commencements of suits in the national courts contained in § 1 of the act of 1875 does not apply to their removal under § 2 of said act. And this con-
112 clusion does not, as suggested by counsel for defendants, render nugatory the provision (sub. 3 of § 639, R. S.) for removing causes on the ground of prejudice or local influence, or that of the act of 1887, allowing the grounds of such removal to be contested in the circuit court; for although a cause cannot be removed for prejudice or local influence unless the parties are also citizens of different States, yet it may be removed on the former ground after it is too late to apply on the latter one alone. The petition in the case of diverse citizenship must be filed before or at the time at which the suit could first be tried, while in the case of prejudice or local influence it is sufficient if the petition is filed before the final trial or hearing thereof, and this may be long after the time at which the suit could first be tried. Indeed, it may be filed after a mistrial or a new trial granted, when the prejudice or local influence has so manifested itself as to enable the party against whom it exists to make the necessary affidavit for removal. Ins. Co. *v.* Dunn, 19 Wall., 214.

The fact is, this case was removed on two grounds, or at least two grounds for removal are well stated in the petition, and so long as there is a good cause of removal appearing of record the adverse party is not entitled to have the cause remanded.

The application is denied.

Mr. C. E. S. Wood, for the plaintiff; Mr. Earl C. Bronaugh, for the defendants.

(Signed) MATTHEW P. DEADY,
U. S. District Judge, Oregon.

Endorsed: Filed June 15, 1887. R. H. Lamson, clerk, by R. B. Lamson.

113 And afterwards, to wit, on the 10th day of October, 1887, there was duly filed in said court a report of the master in words and figures as follows, to wit:

114 In the Circuit Court of the United States for the District of Oregon.

CHARLES A. NEAL
vs.
JAMES H. FOSTER, JOHN A. CRAWFORD, WM. Crawford, Ashby Pearce, John R. Baltimore, J. L. Liles, E. Walden, and W. H. Goltra. } Equity. No. 1258.

Master's Report.

To the honorable judge of the above-entitled court:

The above-entitled cause was heretofore referred to me by order of this honorable court to take the testimony and report the same to the court with my findings of fact and conclusions of law thereon.

Messrs. Williams and Wood, counsel for complainant; Messrs. Whalley and Bronaugh and Flinn, counsel for the defendants John A. and William Crawford, J. H. Foster, and Ashby Pearce, and Messrs. Weatherford and Wolverton, counsel for the remaining defendants, accordingly appeared before me from time to time with their respective witnesses, who were duly examined, and the testimony and evidence so taken are herewith returned to this court.

On August 26, 27, and 29, 1887, I heard argument of the respective counsel herein, and, having considered the allegations and evidence of the parties and the argument thereon, I find and report as conclusions of fact the following:

Findings of fact.

I. That on January 19th, 1886, the firm of Sibson, Quack-
115 enbush & Co., as assignees of Sibson, Church & Co., brought their action in the circuit court of the State of Oregon for Linn county against J. H. Foster, and on the 8th day of March, 1886, by consideration of said court, duly recovered judgment against said Foster for $14,037.87 and costs, taxed at $8.85, and interest on

the aggregate amount, $14,046.72, at the rate of 8 per cent. per annum, which judgment was docketed on day of its rendition.

II. That on February 18th, 1886, W. C. Noon & Co. brought their action in the circuit court of the State of Oregon for Linn county against J. H. Foster, and on the 8th day of March, 1886, by consideration of said court, duly recovered judgment against him for $1,909.15 and $11.20 costs, aggregating $1,920.35, with interest thereon at 8 per cent. per annum.

III. That on the 23rd day of January, 1886, Wm. H. Goltra begun an action in the circuit court of the State of Oregon for Linn county against said J. H. Foster, and on the 6th day of February, 1886, the clerk of said county and court entered up a judgment in vacation against said Foster for $14,266.34, with interest thereon at the rate of 10 per cent. — annum from said date; and the further sum of $1,302.20, with interest thereon from said date, at the rate of 9 per cent. per annum; and the further sum of $196.86, with interest from said date at 8 per cent. per annum; and the further sum of $330 as attorneys' fees, and costs and disbursements, taxed at $24.30—aggregating $16,119.70.

IV. That on the 27th day of January, 1886, E. Walden brought his action in the circuit court of the State of Oregon for
116 Linn Co. against J. H. Foster, and on the 23rd day of February, 1886, the clerk of said court and county entered up a judgment in said action against said Foster for $551.00, with interest at 10 per cent. per annum from said date and costs, taxed at $17.30.

V. That on January 30th, 1886, W. H. Goltra begun his action against J. H. Foster in the circuit court of the State of Oregon for Linn Co., and on February 23rd, 1886, recovered judgment therein for $1,096.77, with interest from said date at the rate of 10 per cent. per annum, and the further sum of $470.93, with interest from said date at 8 per cent. per annum, and the further sum of $50 as attorneys' fees, aggregating $1,617.70 and costs, taxed at $19.30.

VI. That on February 8th, 1884, John R. Baltimore begun his action in the circuit court of the State of Oregon for Linn county against J. H. Foster, and on March 10th, 1884, by consideration of said court, recovered judgment against said Foster for $1,578.47, with interest thereon from said date at 10 per cent. per annum, and for $50.00 attorneys' fees, aggregating $1,628.47, and costs, taxed at $24.25.

VII. That on February 24th, 1886, J. S. Liles begun his action in the circuit court of the State of Oregon against J. H. Foster, and on the 12th day of March, 1886, recovered judgment against Foster for $1,039.80, with interest from said date at 8 per cent. per annum and costs, taxed at $9.95.

VIII. That all said judgment- above mentioned were duly docketed in the docket of judgment liens in Linn county on the days of their respective rendition.

IX. That at the bringing of this suit the several judg-
117 ments above enumerated were respectively owned by the plaintiffs therein, excepting the judgments of W. C. Noon & Co. and Sibson, Quackenbush & Co.

X. That on the 11th day of June, 1886, Sibson, Quackenbush & Co. assigned their said judgment to complainant, and on the 19th day of June, 1886, W. C. Noon & Co. assigned their said judgment to complainant; that for the purposes of this suit complainant has owned said judgment- since the dates of their respective assignment to him and now is the owner thereof.

XI. That prior to the beginning of this suit executions were duly issued on the judgments last mentioned (Sibson, Quackenbush & Co. and W. C. Noon & Co.) and were returned unsatisfied.

XII. That Foster was insolvent on February 6th, 1884, and since said time has been insolvent, and has no property out of which the judgments of complainant and the other judgment creditors can be satisfied.

XIII. That on the 6th day of February, 1884, the defendant J. H. Foster and wife transferred and conveyed by deed absolute to defendant John A. Crawford the following property, to wit:

Tract 1. All that certain piece or parcel of land in the town (now city) of Albany, Linn county, Oregon, and known and described as the "Mill lot," bounded on the south by an alley dividing block 12, running east and west; on the east by a line running from the east end of said alley along the east boundaries of block No. 12 and No. 1, in said town (now city), and on the same range to the mouth of the Calapooia creek up to the mill dam; thence along said mill dam to the west side of said stream, at the usual stage of water in the dam;
118 then along and up said stream to a point immediately west of the place of beginning; thence east, across said stream, to where said alley dividing block No. 12 strikes the said Calapooia; together with the mill dam, water power, building, and machinery belonging or appertaining to said lot and mill, and also the mill race or tail race leading from said mills, together with all tenement- and heredit-ments and appurtanances thereunto belonging or in anywise appertaining, saving and excepting therefrom the following: a race leading from the mill dam on or near said premises, formerly — to a saw-mill belonging to Walter and Thomas Monteith and now leading to the flouring mill of Thomas Monteith and Son; with the right at all times to repair and use the same, the said race, for the purpose of conveying the water of said creek from said dam through said premises; the defendant Foster to have the absolute right to take from said water above said dam seven hundred and twenty (720) cubic inches thereof, with the full, complete, absolute right to use any and all of the residue of said water which the owners of said race leading from said dam to the flouring mills of Thomas Monteith and Son may not wish to take from said dam through said race: Provided, however, that the said J. H. Foster should keep said dam as high as it was in October fourth, eighteen hundred and fifty-five, and also in good repair, and in case of distruction to have a reasonable time in which to rebuild it; which said conveyance was on Feb. 7, 1884, recorded in Book 27 of Deeds, Linn county, Oregon, page 500.

Tract 2. A right of way for a flume and ditch eight feet wide

at the bottom and the sides sloping outward *one or one or* at
119 an angle of 45, over and through the west side of fractional lot No. 8, in fractional block No. 13, in the city of Albany, Linn county, Oregon, as follows, to wit: Commencing at a point at or near the southwest corner of said fractional lot 8 aforesaid, and running thence northerly along the western portion of said fractional lot 8 aforedaid on the line and ground occupied by the flume and ditch now built and constructed on the western part of said lot 8 aforesaid to the northern line of said fractional lot 8 aforesaid; also the right of way for said flume and ditch eight feet wide at the bottom, the side sloping outward at an angle of 45, over and through the west side of fractional lot one (1), in fractional block 13, and also over and through the west side of fractional block 12, all in the city of Albany, Linn county, Oregon; the said right of way to be located on the center line of the ditch and flume now built on said right of way or premises for the purpose of conveying the water of the Santiam water ditch or canal to the flouring mills known as the "Magmolia mills," and extending four feet wide on each side of said center line of said flume or ditch at the bottom thereof, commencing at the southern boundary line of said fractional lot one (1), in said fractional block 13 aforesaid, and running thence northerly on the line where said ditch or flume is now built, through the western portion of fractional lot 1 and through the western portion of fractional block 12 aforesaid, the whole distance thereof from south to north, and the right to pass water through the same at all times at its full capacity the whole length of said ditch and flume for the purpose of transportation or other purposes, and to dig said ditch to any necessary depth to pass the water of the Santiam
120 water ditch and canal through the same, and the right to enter upon the premises above described for the purpose of building, repairing, constructing, and using said ditch and flume for the purpose for which it was built, without doing any unnecessary damage to the premises through which said right of way passes; which conveyance was recorded in Book 27 of Deeds, as aforesaid, p. 499, Feb. 7, 1884.

Tract 3. Block 55 in the city of Albany, Linn county, Oregon, as the same is designated and numbered on the maps and plats of said city now on file in the office of the county clerk of said Linn county, save and except two lots on the west side of said block heretofore sold to Maggie I. Foster (now Powell), which conveyance was recorded in Book Z of Deeds, as aforesaid, p. 520, Feb. 7, 1884.

Tract 4. Lot No. one (1), in block No. 11, in the city of Albany, Linn county, Oregon, which deed was recorded in Book Z of Deeds, as aforesaid, p. 519, Feb. 7, 1884.

Tract 5. An equal undivided one-half of the Albany water works, including hydrants, pipes, and mains and all stock on hand Feb. 6, 1884, being situated in the city of Albany, Linn county, Oregon, and known as Foster and Crawford's water works, which conveyance was recorded in Book Z of Deeds aforesaid, p. 522.

XIV. That on the 6th day of February, 1884, the defendant J.

H. Foster and wife transferred and conveyed to defendant Wm. Crawford the following-described property, to wit:

Tract 6. Commencing 8 feet west of the southeast corner of lot 4, in block 6, on First street, in the city of Albany, Linn county, Oregon, at the center of the wall between the building known as the Foster block and that now owned by Otto Fox and occupied by J. Gradwohl, running thence west parallel with said street 74
121 feet to the center of the partition wall between said Foster block and the building formerly occupied by Monteith and Lentenbach, and from thence north 100 feet to the alley, thence east at right angles along the alley 74 feet to a point parallel with the place of beginning, and from thence south parallel with the center line first above described to the place of beginning, so as to include the brick store now, Febr. 6, 188–, occupied by Mason and Foshay, L. E. Blain, Will Bros., and Mr. Ewart's jewelery store, with the offices and halls above, with all and singular their rights and appurtenances of every name, nature, and description, recorded in Book Z of Deeds aforesaid, p. 521, on Feb'y 7, 1884.

XV. That on February 7th, 1884, defendant J. H. Foster, his wife not joining, conveyed to defendant Ashby Pearce the following-described property, viz:

Tract 7. Commencing at a point on the north side of First street, in Albany, Linn county, Oregon, twenty-six feet, more or less, east from the southwest corner of lot 7 of block 4 of said city, on the north and south line between John Foster and James H. Foster, the defendant- herein; thence north on the center of the brick wall to the north side of the alley that divides block 4 of said city, running east and west; thence along south side of the alley 25 feet, more or less, to the center of the brick wall on the east side of the brick house on said land; thence south through the center of said wall to the north side of First street of said city; thence west along the north side of First street to the place of beginning; which said deed was recorded July 8th, 1884, in Book Z of Deeds, as aforesaid, page 536.

XVI. That the parties to said respective transfers at the time the transfers were made agreed upon the following prices for
122 said several tracts:

Tract 1 & 2	$38,000	
" 3	2,500	
" 4	500	
" 5	3,000	
" 6	25,000	
Tract 7	4,000	
Grain sacks	3,000	
Book accounts	3,000	
		$79,000 00

XVII. That at the time of the transfer the said several parcels of property, real and personal, so transferred by Foster to J. A. Crawford were fairly and reasonably worth—

Tract 1 & 2	$30,000	
" 3	2,500	
" 4	500	
Tract 5	3,000	
Book accounts	3,000	
Grain sacks	3,000	
Total		$42,000
The property conveyed to William Crawford at the time of the transfer was actually worth		18,000
The real property conveyed to Ashby Pearce was at the time of the transfer actually worth	$3,500	
And the personal property	700	
Total		4,200
		$64,200

123 XVIII. That in 1867 J. H. and John Foster were partners in a mercantile business under the firm name of J. H. Foster & Co., and in that year bought the "Magnolia mill" from Wm. Crawford for $16,000, paying $6,000 cash and executing five notes for $2,000 each, of date July 20th, 1867. These notes were secured by a mortgage on the mill property and a brick store, which mortgage was duly recorded.

XIX. That in 1876 J. H. Foster bought out John Foster's interest in the mills and business and assumed all the debts and liabilities of J. H. Foster & Co., and thereafter individually continued the business under the same firm name.

XX. That the business of the Crawfords with J. H. Foster was, for a considerable time, conducted under the name of Crawford Bros., and was transacted by John A. Crawford, who was the agent and representative of Wm. Crawford.

XXI. That on or before the 6th day of February, 1884, J. H. Foster was owing said J. A. Crawford on notes and accounts for money lent and water rent the sum of $27,733.00, which was then due and unpaid, and that at the time said J. A. Crawford was also liable as surety for $16,000, or thereabouts, upon endorsements which he had made for the accommodation of said Foster.

XXII. That on said 6th day of February, 1884, said J. A. Crawford, as a part of the consideration for said transfer, executed and delivered to J. H. Foster his note for $10,000, with the understanding that said Foster should hold said note as a security that said Crawford should perform a verbal agreement then made between said J. A. Crawford and said Foster to the effect that said Crawford should purchase the wheat of or satisfy divers persons who held warehouse receipts of said Foster for wheat stored by them with said
124 Foster in his warehouse, and which wheat Foster had converted to his own use to the amount, in all, of about 20,000 bushels, and save said Foster harmless therefrom.

XXIII. That said J. A. Crawford then agreed with said Foster

that, as a part consideration for the transfer of said property, he would assume and pay the said $16,000 for which he was security for said Foster as aforesaid.

XXIV. That all of said indebtedness of said J. H. Foster to said J. A. Crawford was at the date of said transfer surrendered to said Foster and cancelled as a part of the consideration for said property so deeded and transferred as aforesaid, and that said Crawford has since taken up and cancelled said wheat receipts and satisfied said note of $10,000, and has since said 6th day of February, 1884, paid said debts on which he was security for said Foster and caused the same to be cancelled as to said Foster.

XXV. That the purchase of said property from said J. H. Foster by J. A. Crawford as aforesaid was made in good faith and that full value was paid therefor.

XXVI. That the defendant Ashby Pearce was an accommodation maker only of the note to J. H. Foster & Co. which said Pearce afterward paid to John Conner; that at the date of the transfer by J. H. Foster to said Pearce as aforesaid said Foster was indebted to Pearce in the amount of said note so paid by Pearce as surety for Foster; said note was for $5,000; that the purchase of said property by Pearce was in good faith and that more than full value was paid therefor.

XXVII. That on the said 6th day of February, 1884, said J. H. Foster was not indebted to William Crawford; that the mort-
125 gage referred to in finding XVIII was prior to its satisfaction on the record, which took place on the 31st of July, 1883, paid in full; that said mortgage was satisfied of record by Wm. Crawford on the last-mentioned date; that no valid consideration for the transfer of the brick block to said Crawford by said Foster passed from said Crawford to said Foster; that said conveyance of said brick building by said Foster to said Crawford was a voluntary one.

XXVIII. That since the transfer of said brick building by said Foster to said Wm. Crawford the latter has expended thereon in permanent improvements some $2,000.

XXIX. That the value of the property in controversy herein, exclusive of costs, is over $5,000; that the citizenship of the parties to this suit is as alleged in the bill.

Conclusions of Law.

As conclusions of law I find:

I. That the complainant's bill should be dismissed as to defendants Ashby Pearce and John A. Crawford.

II. That the deed of J. H. Foster to defendant Wm. Crawford is constructively fraudulent and void as against the complainant and the other creditors of said Foster named in the pleadings and should be cancelled and set aside.

Respectfully submitted.

GEO. H. DURHAM, *Master.*

126 In the United States Circuit Court for the District of Oregon.

CHARLES A. NEAL
vs.
J. H. FOSTER *et al.* } Equity. No. 1258.

Master's Report Accompanying Findings.

To the honorable judges of the above-entitled court:

This is a suit brought by the complainant in the nature of a creditor's bill, seeking to set aside certain conveyances of real property made on February 6th, 1884, by defendant James H. Foster to defendants John A. Crawford, William Crawford, and Ashby Pearce, upon the ground that the said conveyances were made by the grantor and accepted by the grantees, respectively, to hinder, delay, and defraud the complainant and certain of the defendants, as creditors of the said Foster.

The bill and the answer of the principal defendants, Foster and the Crawfords, are not subdivided into paragraphs, and are therefore not convenient for reference. I therefore append a brief abstract of the pleadings:

Bill.

That on and prior to Feb. 6, 1884, Foster was indebted to Sibson, Church & Co. in the sum of $13,034.96; that on April 15th, 1885, said firm furnished Foster with a statement of acc't and on July 15, '85, assigned said claim for value to Sibson, Quackenbush & Co., and on July 19th, '86, said assignees sued Foster thereon and recovered judgment on March 8, '86, for $14,057.87 and $8.85 costs; judgment was docketed in Linn county on same day; execution was issued March 15th and returned unsatisfied March 16, 1886, and now remains unpaid and a lien on all property of Foster in Linn Co.; that on June 11, '86, Sibson,
127 Quackenbush & Co., for value, sold and assigned said judgment to complainant, who now owns it.

That on and prior to Feb. 6th, 1884, Foster was indebted to W. C. Noon & Co. in the sum of $1,599.00, and on Feb. 8, 1884, Foster gave Noon & Co. his promissory note for said sum, bearing interest at 10 per cent.; that during Feb., 1884, Foster purchased from Noon & Co. goods at agreed value of $845, and agreed to pay interest on said sum at 10 per cent. after 60 days from day of sale.

That on Feb. 18th, 1886, Noon & Co. sued Foster on said demands in the circuit court of Linn county, and on March 8th, 1886, recovered judgment in said action for $1,909.15 and $11.20 costs and interest on $1,920.35 at 8 per cent., which judgment was duly docketed March 8th, 1886, and on March 15th execution was issued and returned unsatisfied and no part been paid and said judgment a lien on Foster's property in Linn county.

That on June 19th, 1886, Noon & Co., for value, sold and assigned said judgment to plaintiff, who now owns the same.

That when said debts were contracted and said judgments rendered, and until Feb. 6th, 1884, Foster was acknowledged owner of

real property described in complaint, to wit, "mill lot" bounded, &c., with buildings, machinery, mill race, water power, etc. (described) in Albany, connecting Santiam ditch with Magnolia mills; third, block 55, Albany, except 2 lots; fourth, lot No. 1, in block 11, Albany; fifth, one-half interest in Albany water works; sixth, 74 by 100 feet, including brick store thereon, in Albany (described).

That parcels 1, 2, 3, 4, & 5 aforesaid were on February 6th, 1884, conveyed by Foster to John A. Crawford.

That parcel 6 was on Feb. 6, 1884 conveyed by Foster to Wm. Crawford.

That on Feb. 7th, 1884, Foster conveyed to defendant Ashby
128 Pearce part of lot 7, block 4, Albany, with building, brick store (described).

That each and all of said conveyances by Foster were voluntary and without consideration, and were made by him and accepted by said defendants with intent to hinder, delay, cheat, and defraud Foster's creditors, and especially Sibson, Quackenbush & Co. and Noon & Co., and said grantees took said deeds with full knowledge of all the facts and of such intent as to creditors and in secret trust for Foster.

That Foster did not then or since have any other property except that mentioned in said deed, and is insolvent.

That the property so conveyed was at date of said conveyances worth $110,000 and is now worth more.

That said grantees hold said property under said deeds and Foster is still in possession and enjoyment thereof.

That on March 10th, 1884, defendant Baltimore recovered judgment in Linn county circuit court against Foster for $1,628.47 and 24\frac{45}{100}$ dollars cost.

That on February 23rd, 1886, defendant Goltra recovered judgment against Foster for $1,617.70 and $19.20 costs.

That on March 12th, 1886, defendant Liles recovered judgment against Foster for $1,039.80 and $9.95 costs.

That on February 23rd, 1886, defendant Walden recovered judgment against Foster for $551.00 and $17.50, all in Linn county.

That execution *were* duly issued and returned unsatisfied on judgments Baltimore and Goltra.

That Foster had no property in his own name subject to execution since February 7th, 1884.

Prayer that said conveyances be cancelled as made to hinder, delay, and defraud Foster's creditors; that his assets be mar-
129 shalled and the property sold to *by* debts according to priorities.

Answer of Foster and Jno. A. & Wm. Crawford.

Denies that prior to Feb. 6th, 1884, or on that day Foster was indebted to Sibson, Church & Co. in any greater sum than $6,800.75, and denies any acc. stated furnished to Foster. Admits said debt is unpaid, and that on July 15th, 1885, S., C. & Co. assigned to Sibson, Quackenbush & Co. said alleged debts of $13,034.96, and that on

August 15th, 1885, S., Q. & Co. presented account stated to Foster of amount due by him to S., C. & Co. on April 15th, 1885, which shows that all said debts accrued after Feb. 6th, 1884, except $6,800.75 thereof.

Admits that on January 19th, 1886, S., C. & Co. sued Foster for said debts and recovered judgment for $14,037.87 and $8.25, with interest at 8 per cent., which was docketed as alleged.

Admits execution issued thereon and returned unsatisfied, as alleged in complaint, and that no part of it is paid, and Foster has and had when this suit begun no property subject to execution, but deny same due plaintiff or lien on Foster's property.

Admit that about June 11, 1886, signed writing purporting to assign said judgment to plaintiff, but deny that plaintiff ever has been the owner thereof, and alleged said assignment made without Neal's knowledge and without consideration and for sole purpose of attempting to give U. S. court jurisdiction, and that S., Q. & Co. are still the real owners of said judgment and Neal has no interest therein except to lend S., Q. & Co. the use of his name in this suit.

Admit that prior to Feb. 6th, 1884, Foster was indebted to W. C. Noon & Co. in the sum of $1,599.00, and gave them his note therefor on Feb. 8th, 1884, bearing 8 per cent. interest.

Deny that during Feb., 1884, or at any time Foster purchased or received from Noon & Co. goods of agreed value of $845.00
130 or any price or agreed to pay 10 per cent. or any interest thereon after 60 days or at all.

Admit that Feb. 18th, 1886, suit by Noon & Co. *vs.* Foster in Linn circuit court on the alleged indebtedness and on March 8th, 1886, judgment was rendered therein against Foster for $1,909.15 and $11.20 costs and interest at 8 per cent. and judgment duly docketed March 8th, 1886, and execution issued and returned unsatisfied and no part of said judgment has been paid, and Foster has no property subject to execution, but deny that plaintiff owns said judgment or that it is a lien upon any property of Foster.

Deny that on June 19th, 1886, Noon & Co., for value, sold or assigned said judgment to plaintiff or that he owns the same, but that same was pretended to be assigned by Noon & Co. to plaintiff in writing on June 19th, 1886, but without knowledge of Neal and without consideration, for purpose of conferring jurisdiction on U. S. court, and Noon & Co. still own same.

Deny that when any of said indebtedness was contracted by Foster except the $1,909.15 owing to Noon & Co. and the $6,800.75 to S., Q. & Co. Foster was the acknowledged owner of any of the real property mentioned in the complaint or that any of the credit extended to him by said judgment creditors was upon the faith of his ownership of said property.

Admit that on Feb. 6th, 1884, Foster conveyed tracts 1, 2, 3, 4, & 5 to John A. Crawford, and to Wm. Crawford tract 6, and on Feb. 7th, 1887, tract 7 to Ashby Pearce, but deny that any of said conveyances were voluntary or without full consideration or were made or accepted with intent to hinder, delay, or defraud any creditor of Foster or any person.

Aver the truth to be that on Feb. 6th, 1884, Foster was short about 20,000 bushels of wheat, receipted for him under name
131 of J. H. Foster & Co., in which he was then and from 1876 had been doing business; that Foster had not enough wheat by about 20,000 bushels to meet said outstanding warehouse receipts nor had he purchased the same which — due on demand from him to the person holding said receipts.

That on Feb. 6th, 1884, Foster and J. A. Crawford entered into contract whereby Foster sold and agreed to convey to J. A. Crawford tracts 1, 2, 3, 4, 5, & 6, and agreed to assign and deliver to him all the book accounts then owned by Foster partaining to the warehouse, mill, and water works in Albany, valued at $3,000, and all the grain sacks on hand, valued — $3,000, for about $64,000, and to furnish about 20,000 bushels of wheat to holders of said receipt or to pay for same and relieve Foster from liability for the same.

That about $64,000 was to be paid by J. A. Crawford as follows:

$5,000 to Bank of British Columbia on Foster's note and endorsed by J. A. Crawford as security.
$5,000 to First National Bank, Albany, Foster's debt with J. A. Crawford as security.
$1,000 Foster's note to John Conner, J. A. Crawford, security.
$4,900 to Frank Parton, Foster's debt, J. A. Crawford, security.
$16,433 then owing on 6 notes, dated July 20th, 1883, given by Foster to defendant Wm. Crawford.
$26,520 then owing by Foster to John A. Crawford on 3 notes.
$5,803 the- owing by Foster to John A. Crawford on account.

$64,656 total.

That in accordance with said agreement Foster conveyed lots 1, 2, 3, 4, & 5 to John A. Crawford and lot 6 to Wm. Crawford and assigned and delivered said books, accounts, and grain sacks to J. A. Crawford, who then assumed Foster's liability on the
132 wheat receipts and redeemed about 20,000 bushels thereof and paid Foster about $64,000, as above set out, by paying security debts and surrend-ing claims of the two Crawfords against Foster, which was, in fact, more than the worth of said property, and said conveyances were made and accepted in good faith and for full value and without any intent to hinder, delay, or defraud any creditor of Foster.

That prior to Feb. 6th, 1884, Pearce borrowed for Foster of First National Bank of Albany $5,000, which Foster received and their note was given therefor, Foster as security; and on Feb. 7th, 1884, said note was due and Foster sold and conveyed to Pearce tract 7 for $4,000 subject to Mrs. Foster's dower; that Pearce paid said $4,000 on said $5,000 note, which was more than the worth of tract 7 with said incumbrance, and said conveyance was in good faith for full value and without fraudulent intent.

Deny that Foster had no property left, and alleged had large amount of flour and feed in the mill and large amount flour shipped by Sibson, Church & Co. to Europe and sold by them for Foster dur-

ing last of 1884, and on Feb. 6, 1884, $413.14 was due Foster from Everding & Farrell, which was afterward paid to Sibson, Church & Co. on Foster's account, and Foster also had then 50,000 bbls. flour at Portland, which was sold in 1884 and proceeds paid S., C. & Co. on Foster's account.

Admit Foster was on Feb. 6th, 1884, and prior and since was insolvent.

Deny that any things alleged in complaint were known to defendants at that date, except that Foster owned the 7 parcels of property except as is admitted in this answer.

Admit Foster has no property out of which plaintiff's claim can be realized.

Deny the property worth $110,000 (dollars) or more than
133 $56,000 on Feb. 6th, 1884, or now.

Admit that Crawford and Pearce hold the property so conveyed to them by Foster, but deny that Foster owns any interest in the same or is in possession of any of it except tract 3, the dwelling-house, which he occupied as J. A. Crawford's tenant.

Admit residence of defendants to be in Oregon.

Admit that Baltimore, Goltra, Lislis, and Waldron own the said judgments, as alleged in complaint, for the amount set forth, and that they were docketed as alleged, but deny that any of them are liens on Foster's property.

134 On many points the testimony in this cause is vague and unsatisfactory, and there is rather more than the usual contradiction between the witnesses of the respective parties.

This is not singular when we consider the interest of the parties and witnesses, the extent of the transactions into which enquiry is made, and the period of time covered by them. The extreme difficulty of ascertaining the exact truth remains, however.

Many circumstances have been pointed out by the able counsel for complainant and the creditor defendants which tend to cast a cloud of suspicion over the *bona fides* of the transactions between the defendants Foster and J. A. Crawford; but, in view of the answer of these defendants, fully denying the alleged fraud, and the concession of complainant's counsel on the argument that said Crawford has discharged a large amount of Foster's indebtedness since the transfer, I have concluded that the transaction ought not to be disturbed. I think that the evidence shows that J. A. Crawford has paid a full consideration for all the property conveyed to him.

The learned and plausible counsel for the Crawfords insist that the transaction between Foster and Wm. Crawford is equally fair and honest. I am unable to concede this. The testimony shows that in 1867 said Crawford sold the Magnolia mill property to J. H. & John Foster for $16,000, receiving $6,000 in cash and taking five promissory notes of the Fosters for $2,000 each, bearing date July 20, 1867. These five notes, constituting Exhibit 7, were secured by a mortgage on the mill and other property, duly executed and recorded (Ex. F). The last of the notes was due in July, 1872. It is contended on behalf of Wm. Crawford that these notes were taken

up by J. H. Foster's notes, six in number, for $16,000, bearing date July 20, 1883. These notes are in evidence as Exhibit 6.

135 It is shown by Ex. F as well as the testimony of witnesses that said mortgage was canceled of record by said Crawford on July 31, 1883. Foster intimates that the notes composing Ex. 6 do not bear the true date of execution, though he is unable to assign any reason for such antedating if it did take place. It appears that in 1876 J. H. Foster bought the interest of his brother John in the business and property of J. H. Foster & Co. and assumed all the liabilities of the late firm. This was four years after the maturity of the last of the five notes given for the mill by the two Fosters. Under the circumstances one would suppose that John Foster would have insisted upon the taking up of these notes, either by having J. H. pay for them or by the substitution of new notes, thereby securing his release from further liability. The testimony shows that during all these years Foster was doing a lucrative business and was expending considerable sums in the improvement and development of his mill property and in embarking in other ventures, yet it is claimed that he had not only not paid the notes given for the purchase price of the mill, but that he had allowed some $6,000 of interest to accrue thereon. It appears that in 1876 Foster paid large sums to J. A. Crawford in money and by transfer of notes on other people, and to suppose, in view of these facts, that Wm. Crawford would allow these notes, Ex. 7, thus to run until the interest amounted to three-fifths of the principal makes a large draft on the credulity of one who is in anywise acquainted with the methods of business obtaining among business men; but, aside from the strong probability that these notes were paid long before the satisfaction of the mortgage, there is the positive testimony of ex-County Clerk Stewart, who says that upon the passage of the law known as the mortgage tax law, which went into operation in 1883, he called the attention of Wm. Crawford to the fact that the

136 records disclosed an unsatisfied mortgage in his favor against Foster and asked him to call and see about it. Crawford did so and expressed surprise that the mortgage was yet on the record, remarking that it had been paid off several years before. Mr. Conner, a banker in Albany, testifies that in 1878 or '79 his attention was called to the fact that this mortgage was unsatisfied of record, and, desiring to keep informed as to the credit and condition of his customers, he asked Foster in relation to it, and was told by him that the mortgage was paid. It will be observed that this was several years before the date of the notes which are now claimed to have been given in lieu of the mortgage notes. Mr. Wm. Crawford in his sworn return to the assessor made in 1881 (Ex. E) gives in his notes as aggregating $5,000. He certainly could not have had the notes of 1867 when he swore to that return. Besides, it is too unreasonable to believe that Crawford would cancel a valid mortgage on good property by taking unsecure notes therefor, especially in view of the fact that his debtor would not pay his interest, and in view of the further fact that Foster already owed J. A. Crawford an amount which, with William's claim, approximated the value of

Foster's entire estate. An attempt has been made to explain away the testimony and circumstances to which I have referred on the theory that Crawford was willing to dodge taxation and had made an agreement with Foster that he would pay the taxes on the unsecured notes if Crawford would satisfy the mortgage by taking them. I see no force in this position. It was just as easy for Foster to pay the taxes on the mortgage as upon the notes. In view of all the testimony bearing upon and circumstances attending the transaction between Foster and Wm. Crawford, I am forced to the conclusion that the conveyance from Foster to said Crawford was a voluntary one, and that it should therefore be set aside.

Respectfully submitted.

GEO. H. DURHAM, *Master*.

137 Endorsed: Filed October 10, 1887. R. H. Lamson, clerk.

138 And afterwards, to wit, on the 27th day of October, 1887, there was duly filed in said court exceptions of Wm. Crawford to master's report in words and figures as follows, to wit:

139 In the Circuit Court of the United States for the District of Oregon.

CHARLES A. NEAL, Complainant,
vs.
JAMES H. FOSTER, JOHN A. CRAWFORD, WILLIAM CRAWford, Ashby Pearce, John R. Baltimore, J. L. Liles, E. Walden, and W. H. Goltra, Defendants. } No. 1258.

Now comes the defendant William Crawford, by his solicitors, and excepts to the following portions of the report of George H. Durham, master, made and filed in this cause, for that the same is erroneous, insufficient, and contrary to the evidence and the law for the reason hereinafter stated and set forth:

First. Said defendant excepts to that portion of said report contained in subdivision XVII thereof in which tracts 1 and 2 of the property therein described are found to have been of the value of $30,000, and the book accounts therein referred to are found to have been of the value of $3,000, and the grain sacks therein referred to are found to have been of the value of $3,000 at the time of the transfer of said property by said Foster to said Crawford, for the reason that said findings of value are not sustained by the evidence, but are contrary thereto.

Second. Said defendant excepts to that portion of said report contained in subdivision XXII thereof in which the note of $10,000 therein referred to is found and reported to be the amount paid by J. A. Crawford in redeeming the wheat receipts of 20,000
140 bushels of wheat; which finding is excepted to because the same is contrary to the evidence, by which it is shown that the lowest price of wheat at the time was 85 cents per bushel, and that John A. Crawford therefore necessarily paid out at least $17,000 in redeeming said receipts.

Third. Said defendant excepts to that portion of said report contained in subdivision XXIV thereof in which said note of $10,000 is estimated as the amount paid by J. A. Crawford in redeeming said wheat receipts, for the reason last above set forth in exception to finding XXII.

Fourth. Said defendant excepts to the total amount of indebtedness reckoned in subdivision- XXI to XXIV, inclusive, of said report at the sum of $27,733.50 + $16,000 + $10,000 as being the consideration paid by John A. Crawford to J. H. Foster for the property conveyed by the latter to the former; which finding is excepted to because the same is contrary to the evidence, by which said consideration is shown to have amounted to at least $61,733.50 instead of $53,733.50, the aggregate of the above-mentioned sums, since the money paid by J. A. Foster in redeeming said wheat receipts was at least $17,000 instead of $10,000.

Fifth. Said defendant excepts to that portion of said report contained in subdivition XXVII thereof in which it is found by said master that on February 6th, 1884, Foster was not indebted to Wm. Crawford, and that the mortgage therein mentioned was paid in full prior to the satisfaction of said mortgage on the record, and that no valid consideration for the transfer of the brick block to Wm. Crawford by Foster passed from said Crawford to said Foster, but that said conveyance was voluntary; which is excepted to for the reason that said findings are and each of them is supported
141 and contradicted by evidence.

Sixth. Said defendant excepts to the second conclusion of law of the master that the deed of Foster to William Crawford is constructively fraudulent and void as against the persons therein named by the master or any of them or at all and should be cancelled and set aside, which conclusion is excepted to for the reason that the same is not supported or sustained by the evidence.

Seventh. Said defendant excepts to the failure and refusal of the master to find, as a conclusion of law, that said William Crawford is entitled, if said deed should be set aside, to have refunded to him the $2,000 shown by finding of fact numbered XXVIII to have been expended by him in permanently improving said property since the same was conveyed to him by said Foster, which is excepted to for the reason that if said deed should be set aside the said sum of $2,000 ought in equity to be refunded to said William Crawford.

L. FLINN,
J. W. WHALLEY,
E. C. BRONAUGH, &
H. H. NORTHUP,
Solicitors for Wm. Crawford.

142 STATE OF OREGON, } ss:
Multnomah County, }

Due service of the within exception to report is hereby admitted at Portland, Oregon, in said county and State, this 26th day of Oc-

tober, 1887, by receiving a copy thereof, duly certified to as such by E. C. Bronaugh, attorney for defendants.

WILLIAMS, ACH & WOODS,
Attorneys for Complainants.

Endorsed: Filed October 27, 1887. R. H. Lamson, clerk.

143 And afterwards, to wit, on the 1st day of November, 1887, there was duly filed in said court a notice in words and figures as follows, to wit:

144 In the Circuit Court of the United States for the District of Oregon.

CHARLES A. NEAL, Complainant,
vs.
J. H. FOSTER *et al.*, Defendants.

To W. H. Goltra, one of the defendants in the above-entitled suit, and Messrs. Weatherford & Blackburn, his solicitors:

You are hereby notified that J. H. Foster, J. A. Crawford, and William Crawford, defendants in said suit, will, on Monday, November 7, 1887, at 10 o'clock a. m., apply to the above-entitled honorable court for leave to file their supplemental cross-bill in said cause making you defendant thereto, a copy of which cross-bill hereto annexed is deposited with the clerk of said court for you.

J. W. WHALLEY,
E. C. BRONAUGH, AND
H. H. NORTHUP,
Solicitors for Complainants in said Cross-Bill.

145 STATE OF OREGON, *County of Multnomah*, } *ss:*

I, Harold Pilkington, being duly sworn, say on oath that I served the foregoing notice, together with the copy of cross-bill therein mentioned, upon said W. H. Goltra and Weatherford & Blackburn, his solicitors therein named, on the 1st day of November, 1887, by depositing the same with the clerk of said court and by mailing a copy of said notice at the post office in Portland, Oregon, addressed to said Weatherford & Blackburn, at Albany, Oregon.

HAROLD PILKINGTON.

Subscribed and sworn to before me this 1st day of November, A. D. 1887.

E. H. PEERY,
Notary Public for Oregon.

Endorsed: Filed Nov. 1, 1887, R. H. Lamson, clerk, by R. B. Lamson, deputy.

146 And afterwards, to wit, on the 3d day of November, 1887, there was duly filed in said court exceptions of plaintiff to master's report in words and figures as follows, to wit:

147 In the Circuit Court of the United States for the District of Oregon. In Equity.

CHARLES A. NEAL, Complainant,
vs.
JAMES H. FOSTER, JOHN A. CRAWFORD, WILLIAM CRAWFORD, Ashby Pearce, John R. Baltimore, J. S. Liles, E. Walden, and W. H. Goltra, Defendants.

Now comes the above-named complainant, Charles A. Neal, by his solicitors, George H. Williams and C. E. S. Wood, and excepts to the following portions of the report of George H. Durham, master in chancery (made and filed in this cause on the 10th day of October, 1887), for the reasons hereinafter stated:

I.

Complainant excepts to that portion of said report subdivided as finding of fact No. XXI in which it is found by said master substantially that, on or before February 6, 1884, J. H. Foster was owing J. A. Crawford, on notes and accounts and on money loaned and water rents, the sum of $27,733.00, for the reason that said finding of fact is not supported by the evidence, but is contrary thereto.

II.

Complainant excepts to that portion of said report subdivided as finding of fact No. XXII in which it is found by said master substantially that J. A. Crawford executed his note on February 6, 1884, for $10,000.00 to secure his performance of a contract to satisfy claims against the defendant Foster for 20,000 bushels of
148 wheat, for the reason that said finding of fact is not supported by the evidence, but is contrary thereto.

III.

Complainant excepts to that portion of said report subdivided as finding of fact No. XXIII in which it is found by said master substantially that J. A. Crawford assumed the payment of $16,000.00, for which he was security for the said defendant Foster, for the reason that said finding of fact is not supported by the evidence, but is contrary thereto.

IV.

Complainant excepts to that portion of said report subdivided as finding of fact No. XXIV in which it is found by said master substantially that all of the indebtedness of the defendant Foster to the defendant J. A. Crawford was, at the date of the transfer of the property, as in the bill of complaint alleged, surrendered as part of the consideration for the property so conveyed to the defendant J. A. Crawford, for the reason that said finding of fact is not supported by the evidence, but is contrary thereto, and further excepts to that portion of said subdivision No. XXIV which finds that the said J.

A. Crawford has, since said conveyance, taken up and canceled said wheat receipts and satisfied said note for $10,000 and has paid the said debts of said defendant Foster for which he was security, for the reason that said finding of fact is not supported by the evidence, but is contrary thereto.

V.

Complainant excepts to that portion of said report subdivided as finding of fact No. XXV in which it is found by said master substantially that the purchase of said property from said J. H. Foster by said J. A. Crawford was made in good faith, and that
149 full value was paid, for the reason that said finding of fact, both as to the good faith of the transaction and the value paid, is not supported by the evidence, but is contrary thereto.

VI.

Complainant excepts to that portion of said report subdivided as finding of fact No. XXVI in which it is found by said master substantially that the defendant Ashby Pearce was an accommodation maker only of the note to J. H. Foster & Co. which said Pearce afterwards paid to John Conner; that at the date of the transfer from said Foster to said Pearce, Foster was indebted to Pearce, and that the purchase by said Pearce was in good faith and more than full value was paid therefor, for the reason that there is no evidence to support said finding of fact, either as to the good faith or as to the value paid.

VII.

Complainant excepts to that portion of said report subdivided as conclusion of law No. I in which it is found by said master that the complainant's bill should be dismissed as to defendants Ashby Pearce and John A. Crawford, for the reason that said conclusion of law is erroneous and contrary to the law and the evidence.

GEO. H. WILLIAMS,
C. E. S. WOOD,
Solicitors for Complainant.

150 UNITED STATES OF AMERICA, *District of Oregon*, } ss:

I, —— ——, one of the attorneys for the — in the above-entitled cause, do hereby certify that I have compared the foregoing copy of — with the original thereof, and that the same is a full, true, and correct copy of such original and of the whole thereof.

—— ——,
Attorney for —.

Due service of the within exceptions by certified copy as provided by law is hereby admitted at Portland, Or., November 3, 1887.

E. C. BRONAUGH,
Of Attorney for Defendants.

Endorsed: Filed November 3, 1887. R. H. Lamson, clerk.

151 And afterwards, to wit, on Monday, the 14th day of November, 1887, the same being the 25th judicial day of the regular October term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

152 In the Circuit Court of the United States for the District of Oregon.

CHARLES A. NEAL *vs.* JAMES H. FOSTER, JOHN A. CRAWFORD, William Crawford, Ashby Pearce, John R. Baltimore, J. L. Liles, E. Walcen, and W. H. Goltra.	No. 1258. November 14, 1887.

This cause was heard upon the application of the defendants James H. Foster, John A. Crawford, and William Crawford for leave to file a cross-bill herein against the defendant W. H. Goltra, and was argued by Mr. Earl C. Bronaugh, of counsel for the defendant- James H. Foster, John A. Crawford, and William Crawford, and by Mr. J. K. Weatherford and Mr. C. E. Wolverton, of counsel for the defendant W. H. Goltra.

On consideration whereof it is ordered and adjudged that said application be, and the same is hereby, allowed.

DEADY, *J.*

Endorsed: Filed November 14, 1887. R. H. Lamson, clerk, by R. B. Lamson, deputy clerk.

153 And afterwards, to wit, on the 14th day of November, 1887, there was duly filed in said court a cross-bill in words and figures as follows, to wit:

154 In the Circuit Court of the United States for the District of Oregon.

CHARLES A. NEAL, Complainant, *vs.* JAMES H. FOSTER, JOHN A. CRAWFORD, William Crawford, Ashby Pearce, John R. Baltimore, J. L. Liles, E. Walden, and W. H. Goltra, Defendants.	No. 1258. Original Bill.
and	
JAMES H. FOSTER, JOHN A. CRAWFORD, and WILLIAM CRAWFORD, Complainants, *vs.* W. H. GOLTRA, Defendant.	Supplemental Cross-Bill.

To the hon. judges of the circuit court of the United States for the district of Oregon:

Humbly complaining, your orators, James H. Foster, John A.

Crawford, and William Crawford, bring this their supplemental cross-bill against the above-named defendant, W. H. Goltra, and thereupon your orators allege and show—

That on or about the 1st day of July, 1886, the said complainant, Charles A. Neal, filed his original bill or complaint in this cause in the circuit court of the State of Oregon for Linn county against your orators and Ashby Pearce, John R. Baltimore, J. L. Liles, E. Walden, and W. H. Goltra, as defendants thereto, the object and purpose of said original bill or complaint being as therein stated and prayed.

That afterwards, on or about the 21st day of July, 1886,
155 this cause was, on the petition of said complainant, Charles A. Neal, removed from the said State court to this honorable court, and thereafter your orators respectively made answer to said bill, to which answer said complainant replied; and upon the issues thus joined this cause was, on the 7th day of October, 1886, referred to George H. Durham, master in chancery, to take and report the testimony, together with his findings of fact and conclusions of law in this cause, which report of the master was, on the 10th day of October, 1887, returned by him into this court and duly filed.

That in and by said original bill said W. H. Goltra was made defendant herein as one of the creditors of said James H. Foster, while his interest in this suit is really that of a plaintiff, and that by said original bill and the report of the master said defendant, W. H. Goltra, is alleged to be entitled to share in the proceeds, if any, which may accrue to the creditors of said James H. Foster by virtue of the decree which may be rendered by this honorable court in this cause.

But your orators in this their supplemental cross-bill allege, state, and charge that on or about the 10th day of February, 1886, the said W. H. Goltra filed his complaint in said circuit court of the State of Oregon for Linn county against your orators as defendants thereto, in and by which complaint said W. H. Goltra alleged himself to be the owner and holder of the same identical notes, claims, and demands set forth in his answer to said original bill in this suit, to wit, a promissory note executed by said James H. Foster to William Baltimore on July 10, 1883, for $900, payable ninety days after date, with interest from date at ten per cent. per annum, and assigned by said William Baltimore on January 19th, 1886, for value to him, the said W. H. Goltra.

Also one promissory note executed on January 11, 1884, by said
156 James H. Foster, by the name and style of J. H. Foster & Co., to H. R. Ramsey for the sum of $695.13, payable thirty days after date, with interest at ten per cent. per annum from date, and assigned prior to January 19, 1886, by said Ramsey, for value received, to J. G. Powell, and by him assigned to said W. H. Goltra, for value, on January 19, 1886.

Also one promissory note executed on January 18, 1884, by said J. H. Foster, by the name and style of J. H. Foster & Co., to him, the said W. H. Goltra, for the sum of $2,460.15, payable thirty days after date, with interest at ten per cent. per annum after date.

Also one promissory note executed on February 15, 1883, by said

J. H. Foster, by the name and style of J. H. Foster & Co., to W. C. Morgan for the sum of $1,400, payable one day after date, with interest at nine per cent. per annum from date, and assigned by said Morgan to said W. H. Goltra, for value, on January 19, 1886.

Also one promissory note executed by said J. H. Foster, by said name and style of J. H. Foster & Co., to C. T. Ingram on June 27, 1883, for the sum of $843.10, payable sixty days after date, with interest at ten per cent. per annum from date, and assigned on January 19, 1886, by said Ingram to said W. H. Goltra, for value received.

Also one promissory note executed on January 21, 1884, by said J. H. Foster, under said name and style of J. H. Foster & Co., to said C. T. Ingram for the sum of $725.70, payable one day after date, with interest from date at ten per cent. per annum, and assigned by said Ingram to him, the said W. H. Goltra, on January 19, 1886, for value received.

Also one promissory note executed September 26, 1882, by said J. H. Foster, under said name and style of J. H. Foster & Co., to V. H. Caldwell for the sum of $800, payable one day after date, with interest at ten per cent. per annum from date, and providing for a reasonable attorney's fee in case suit or action should be instituted to collect the same or any part thereof, and assigned on
157 January 19, 1886, by said Caldwell, for value, to said W. H. Goltra.

Also one promissory note executed July 12, 1881, by said J. H. Foster under said name and style of J. H. Foster & Co. to one Thomas I. Anderson for $1,000, payable one year after date, with interest from date at the rate of ten per cent. per annum, and providing for the payment of such sum as attorney's fees in case suit should be instituted to collect the same as the court might adjudge reasonable, and assigned on January 19, 1886, by said Anderson to said W. H. Goltra for value.

Also one promissory note executed on the 16th day of December, 1882, by said J. H. Foster under said name and style of J. H. Foster & Co. to said Thomas I. Anderson for the sum of $600, payable one year after date, with interest from date at the rate of ten per cent. per annum, and providing for the payment of such additional sum as the court might adjudge reasonable as attorney's fees in case suit or action should be instituted to collect said note or any portion thereof, and assigned on January 19, 1886, by said Anderson to said W. H. Goltra for value received.

Also one promissory note executed on February 3, 1883, by said J. H. Foster under said name and style of J. H. Foster & Co. to said Thomas I. Anderson for the sum of $1,705.00, payable one day after date, with interest from date at ten per cent. per annum, principal and interest payable in gold coin, and assigned January 19, 1886, by said Anderson to said W. H. Goltra for value received.

Also that on February 5, 1884, said J. H. Foster was indebted to the firm of Peters & Blaine on an account stated in the sum of $198.11, which demand was, on July 15, 1884, assigned and transferred by said Peters & Blaine to the firm of Peters & Stewart and

was by said last-named firm, on January 19, 1886, sold, transferred, and assigned to said W. H. Goltra for value received.

Also one promissory note executed December 28, 1883, by
158 said J. H. Foster under the name and style of J. H. Foster & Co. to J. G. Powell for the sum of $223.35, payable one day after date, with interest at ten per cent. per annum, and assigned January 19, 1886, by said Powell to said W. H. Goltra for value received.

Also one promissory note executed January 2, 1883, by said J. H. Foster under said name and style of J. H. Foster & Co. to Mrs. C. Blount for $232.80, payable one day after date, with interest at ten per cent. per annum, and providing for the payment of such additional sum as the court might adjudge reasonable as attorney's fees in case suit or action should be instituted to collect the same or any portions thereof, and assigned by said Blount, on January 19, 1886, to said W. H. Goltra for value received.

Also one promissory note executed by said J. H. Foster under said name and style of J. H. Foster & Co. to the Albany Farmers' Co. for the sum of $1,497.24, payable one day after date, with interest at ten per cent. per annum, and assigned on January 19, 1886, by said Albany Farmers' Co. to said W. H. Goltra for value received.

All of which promissory notes and demands were alleged in said complaint of said W. H. Goltra to have been owned and held by him on January 23, 1886.

And said W. H. Goltra further alleged in his said complaint that on January 23, 1886, he commenced action at law against said J. H. Foster in the circuit court of the State of Oregon for Linn county upon each and all of said promissory notes, claims, demands, and accounts, and that on February 6, 1886, he recovered judgment in said action against said J. H. Foster upon said notes and account for the sum of $14,266.34, with interest from said date thereon at the rate of ten per cent. per annum, and the further sum of $1,302.20, with interest thereon from said date at the rate of nine per cent. per annum, and the further sum of $196.86, with interest thereon
from said date at eight per cent. per annum, and the further
159 sum of $330.00 attorney's fees and the costs and disbursements of said action, taxed at $24.30; which judgment was enrolled and docketed in the judgment docket of said court on February 6, 1886, and remained due and unpaid.

That at the time each of said debts was contracted said J. H. Foster was the owner in fee simple of certain real property, which was designated and described in said complaint, and which is the identical real property mentioned and described in the bill of complaint of said Charles A. Neal in this suit, and that on February 6, 1884, the said J. H. Foster, for the purpose of putting said property beyond the reach of his creditors and for the purpose of cheating and defrauding him, the said W. H. Goltra, and other creditors of said J. H. Foster and depriving them of the benefit of said property for the payment of said indebtedness and for the purpose of preventing him, the said W. H. Goltra, from enforcing said judgment against said real property, he, the said J. H. Foster, did execute to

said John A. Crawford the same deed of conveyance of February 6, 1884, mentioned in the bill of complaint of said Charles A. Neal in this suit, conveying thereby to him, the said John A. Crawford, the several parcels of real property described in said original bill and in the said report of the master in this suit as tracts numbered 1, 2, 3, 4, and 5, and that on the same day and for the same fraudulent purpose he, the said J. H. Foster, did, by his deed of February 6, 1884, also convey to said William Crawford the real property described in the bill in this suit and in said master's report as tract numbered 6, and that said conveyances were without any consideration whatever, and that said John A. Crawford and William Crawford each hold the property so conveyed to them in secret trust for said J. H. Foster, who, at the time of the execution of said conveyances, was and ever since has been insolvent, and that said property was, when so conveyed, of the value of $100,000, and
160 that said Crawfords each, at the time of accepting and receiving said respective conveyances, had full knowledge and information of all the facts so alleged in said complaint and accepted said deeds with intent to hinder, delay, and defraud him, the said W. H. Goltra, and the other creditors of said J. H. Foster in the collection of their claim against him, the said Foster, and that said Foster was then still in the possession and enjoyment of said property and was then insolvent, and that execution had been issued upon said judgment and returned wholly unsatisfied for the reason that no property could be found of said J. H. Foster subject to execution, and the prayer of said complainant was and is that each and all of said conveyances by said Foster to said John A. Crawford and William Crawford be set aside and canceled as a fraud upon said W. H. Goltra, and that said property be sold to pay and satisfy the amount due on said judgment from said J. H. Foster to him, the said W. H. Goltra, and for such other relief as might be equitable and for the costs and disbursements of said suit.

That your orators appeared as defendants in said suit and made answer to said complaint, in and by which answer they denied and put in issue each and all of the allegations thereof imputing fraud or fraudulent purpose or intent in either of them in the execution and delivery by said J. H. Foster and the accepting by said Crawfords or either of them said conveyances or either of them, or that either of your orators had any design, purpose, or intent to cheat, hinder, delay, or defraud said plaintiff, W. H. Goltra, or any creditor of said J. H. Foster or any other person whomsoever, or to deprive said Goltra or any creditor of said Foster or any person of the benefit of any of said property, or to prevent him from enforcing said judgment, or that said conveyances were or either of them was without consideration, or that either of the said Crawfords took such conveyance to him or held the property thereby conveyed in secret or any trust for said Foster or in fraud of
161 the rights of plaintiff or any other person or party; and your orators, by way of further and separate answer, set forth and alleged substantially as by their answers in this suit they have answered, that at the time of the execution of said conveyances on said

6th day of February, 1884, said J. H. Foster was justly indebted to said John A. Crawford upon the same identical notes and accounts referred to in the answer of your orators in this suit, and that said John A. Crawford, assumed as part of the consideration of the conveyance by said Foster to him of the said tracts 1, 2, 3, 4, and 5 and of the conveyance to Wm. Crawford of tract 6, to pay and redeem said outstanding wheat receipts given by said Foster for about 20,000 bushels of wheat mentioned in the pleadings and in the report of the master in this suit, and that said conveyance of said tracts last named to said J. A. Crawford and the conveyances of the same date by said Foster to Wm. Crawford were both executed in payment of said indebtedness of said Foster to said Crawfords, amounting to about $64,000, and in further consideration of the redemption by said J. A. Crawford of said outstanding wheat receipts, thereby relieving said Foster of his liability upon said receipts, and that the property so conveyed by said Foster to said John A. Crawford and William Crawford was at the time of said conveyances worth not to exceed the sum of $74,000, and that said conveyances were made and delivered by said Foster and received by said Crawfords respectively in good faith and for a consideration paid by said Crawfords greater than the full value of said property at the time when it was so conveyed and without any intention of hindering, delaying, or defrauding any creditor of said Foster or any other person.

That said W. H. Goltra filed his reply to said answer of your orators in said suit, and upon the issue so joined in said cause the same was on July 9th, 1886, duly tried and heard by and before the said circuit court of the State of Oregon for said county of
162 Linn, and it was on said day found and decreed by said court as follows:

1st. That on the 6th day of February, 1884, James H. Foster, one of the defendants, executed deeds to the defendants John A. Crawford and to William Crawford to the parcels of land described in the complaint; that at the same time the said J. H. Foster transferred to J. A. Crawford the Albany water works; also a large amount of grain sacks and the book accounts of J. H. Foster & Co.

3rd. That J. H. Foster & Co. was not a firm of divers persons, but represented by J. H. Foster alone.

4th. That the mill and appurtenances deeded to J. A. Crawford were at the time of the transfer of the value of thirty thousand dollars.

5th. That the dwelling-house now occupied by J. H. Foster was of the value of twenty-five hundred dollars.

6th. That the small dwelling-house was of the value of three hundred dollars.

7th. That the grain sacks were of the value of three thousand dollars.

8th. That the book accounts were of the value of three thousand dollars; that the water works were of the value of three thousand dollars.

9th. That the brick building deeded to William Crawford was at the time of the transfer of the value of eighteen thousand dollars.

10th. That on and before the said 6th day of Feb., 1884, J. H.

Foster was owing said J. A. Crawford on notes and accounts the sum of $32,333.00, which was then due and unpaid, and that at that time said J. A. Crawford had endorsed for said J. H. Foster and was then liable on said endorsement as surety for said Foster to the amount of $16,000.00.

163 11th. That on the said 6th day of Feb., 1884, J. H. Foster was indebted to the def't Wm. Crawford in the sum of $16,465.00.

12th. That on the said 6th day of February, 1884, said John A. Crawford, as a part of the consideration of such transfer, executed and delivered to the said J. H. Foster his promissory note for the sum of ten thousand dollars, with the understanding that said Foster should hold said note as a security that said Crawford should perform a verbal agreement then made between said John A. Crawford and said Foster that said Crawford should purchase the wheat of or satisfy divers persons who held receipts of said J. H. Foster for wheat stored by them with said Foster in his warehouse and which wheat said Foster had converted to his own use to the amount in all of about 20,000 bushels, and save said Foster harmless therefrom.

13th. That said J. A. Crawford then agreed with said J. H. Foster that he would as a part consideration for said transfer of said property assume and pay the said $16,000 for which he was security for said Foster as aforesaid.

14th. That all of said indebtedness of said J. H. Foster to said defendants, J. A. Crawford and said William Crawford, was, on said 6th day of Feb., 1884, given up by said J. A. and William Crawford to said J. H. Foster as a part of the consideration of said property so deeded and transferred as aforesaid, and that said J. A. Crawford has since taken up and cancelled said wheat receipts and satisfied said note of $10,000.00, and has since said 6th day of February, 1884, paid said debts on which he was security for said Foster, and caused the same to be cancelled as to said Foster.

15th. That the contract of sale and transfer of all of said property by said J. H. Foster to said J. A. Crawford and said William

164 Crawford in the manner herein set forth was all done at one time and was one transaction, and that the division of the property between the said J. A. Crawford and William Crawford was arranged between themselves.

That in said transaction said J. A. Crawford transacted the business for himself and said William Crawford, and that in that behalf he had authority from said William.

That said purchase of said property from J. H. Foster by said J. A. Crawford and said William as aforesaid was made in good faith, and that full value was paid therefor. As conclusions of law the court finds that plaintiff's bill should be dismissed and that defendants are entitled to costs and disbusements.

July 9th, 1886.

(Signed) R. P. BOISE, *Judge.*

It is therefore ordered and decreed by the court that the plaintiff's

bill be dismissed; and it is further ordered and decreed that the defendant herein have and recover from the plaintiff their costs and disbursements in this suit to be taxed, and that execution issue therefor.

(Signed) R. P. BOISE, *Judge.*

165 That thereupon said W. H. Goltra appealed from said decree to the supreme court of the State of Oregon, in which court, on the 11th day of April, 1887, the said appeal was by the order and judgment of said supreme court dismissed at the cost of said appellant, whereby the decree of said circuit court so rendered on said 9th day of July, 1886, remains in full force and effect and in nowise cancelled, reversed, or modified, and the same ever since has been and now is in full force and of binding effect between your orators and said W. H. Goltra.

Wherefore, the premises considered, your orators pray that said W. H. Goltra be made defendant to this their supplemental cross-bill, and that the writ of subpœna be issued out of this honorable court directed to him, the said defendant, and commanding him that he be and appear in this court at a time and upon a penalty to be therein named and full, true, and perfect answer make upon his corporal oath to each and every of the allegations, statements, and charges herein contained as fully and particularly as if the same were here again repeated and he specifically interrogated in regard thereto, and that upon the hearing of this cause the decree of this honorable court may be rendered in favor of your orators and against him, the said Goltra, that he is by the said judgment forever barred, estopped, and precluded from again litigating or contesting in this suit any of the matters or things so litigated and determined in said former suit, and that the original bill of complaint and the answer of said W. H. Goltra herein be dismissed in so far as the pretended rights and claims of said W. H. Goltra in this suit are concerned, and that your orators have such other and further relief as may be meet and equitable, the premises considered, and may be allowed their costs in this suit as against said de-

166 fendant W. H. Goltra; and your orators will ever pray, etc.

J. W. WHALLEY, E. C. BRONAUGH, AND
H. H. NORTHUP,
Solicitors for Complainant in Cross-Bill.

Endorsed: Filed Nov. 14, 1887. R. H. Lamson, clerk, by R. B. Lamson, deputy.

167 And afterwards, to wit, on the 16th day of November, 1887, there was issued out of said court a *subpœna ad respondendum* on cross-bill in words and figures as follows, to wit:

168 DISTRICT OF OREGON, *ss:*

I certify that on the 18th day of Nov., 1887, at Albany, Linn county, in said district, I duly served the within *subpœna ad resp.* upon the within-named W. H. Goltra by delivering to him per-

sonally a true copy of said writ duly certified to by me as U. S. marshal, together with a copy of cross-bill in the within-entitled cause duly certified to by pl'ff's attorney.

PENUMBRA KELLY,
United States Marshal,
By P. A. MARQUAM, JR., *Deputy.*

169 In the Circuit Court of the United States for the District of Oregon.

JAMES H. FOSTER, JOHN A. CRAWFORD, and WILLIAM CRAWFORD, Complainants,
vs.
W. H. GOLTRA, Defendant.

No. 1258. In Equity.
Subpœna ad respondendum.

The President of the United States of America to W. H. Goltra, Greeting:

You *and each of you* are hereby commanded that you be and appear in said circuit court of the United States, at the court-room thereof, in the city of Portland, in said district, on the first Monday of January next, which will be the second day of January, A. D 1888, to answer the exigency of a cross-bill of complaint exhibited and filed against you in our said court, wherein James H. Foster, John A. Crawford, and William Crawford are complainants and you are defendant, and further to do and receive what our said circuit court shall consider in this behalf, and this you are in nowise to omit under the pains and penalties of what may befall thereon.

And this is to command you, the marshal of said district, or your deputy, to make due service of this our writ of subpœna and to have then and there the same.

Hereof fail not.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of our said circuit court, affixed at Portland, in said district, this 16th day of November, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the one hundred and —.

R. H. LAMSOM, *Clerk,*
[SEAL.] By R. B. LAMSON,
Deputy Clerk.

170 MEMORANDUM.—Pursuant to equity rule No. 12 of Supreme Court of the United States—

The defendant is to enter his appearance in the above-entitled suit in the office of the clerk of said court on or before the day at which the above writ is returnable; otherwise the complainant's bill therein may be taken *pro confesso.*

Endorsed: Returned and filed Nov. 19th, 1887. R. H. Lamson, clerk.

171 And afterwards, to wit, on the 31st day of December, 1887, there was duly filed in said court a demurrer to cross-bill in words and figures as follows, to wit:

172 In the Circuit Court of the United States for the District of Oregon.

CHARLES A. NEAL, Complainant,
vs.
JAMES H. FOSTER, JOHN A. CRAWFORD, ASHBY Pearce, John R. Baltimore, J. L. Liles, E. Walden, and W. H. Goltra, Defendants,

and

JAMES H. FOSTER, JOHN A. CRAWFORD, and WILLIAM CRAWFORD, Complainants,
vs.
W. H. GOLTRA, Defendant.

Demurrer of W. H. Goltra.

Now comes W. H. Goltra, defendant above named, by his solicitors, J. K. Weatherford and Chas. E. Wolverton, and demurs to the supplementary cross-bill of the above-named complainants, James H. Foster, John A. Crawford, and William Crawford, filed herein and for reasons thereof assigns the following:

First. Said cross-bill does not state the original bill nor the objects thereof nor the proceedings had thereon.

Second. Said cross-bill introduces new and distinct matters not embraced in the original bill.

Third. The judgment and proceedings had in the State court as alleged in said cross-bill is not an estopple or matter of defense to the answer of the defendant Goltra, for the reasons said judgment was not had and obtained between the same parties in the same right or capacity, the subject-matter was not the same, and said

173 cause was not determined upon its merits.

Fourth. No question is made upon the several judgments obtained by Goltra against Foster in the State court upon the claim set forth in complainants' cross-bill, and if sales to Crawford and Pearce are fraudulent said judgments set forth in complainants' bill should be paid in the order of their priority, being valid liens on premises sold.

Fifth. Said cross-bill does not state facts sufficient to constitute a defense to defendant Goltra's cause of suit.

J. K. WEATHERFORD AND
CHAS. E. WOLVERTON,
Solicitors for Def't Goltra's said Cross-Bill.

174 UNITED STATES OF AMERICA, } ss:
District of Oregon, }

I, —— ——, one of the attorneys for the — in the above-entitled cause, do hereby certify that I have compared the foregoing copy of

— with the original thereof, and that the same is a full, true, and correct copy of such original and of the whole thereof.

——— ———,
Attorneys for —.

Due service of the within demurrer by certified copy as provided by law is hereby admitted, at Portland, Or., December 31, 1887.

E. C. BRONAUGH,
of Attorneys for Defendants.

Endorsed: Filed Dec. 31, 1887. R. H. Lamson, clerk.

175 And afterwards, to wit, on Monday, the 23d day of January, 1888, the same being the 70th judicial day of the regular October term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

176 In the Circuit Court of the United States for the District of Oregon.

CHARLES A. NEAL
vs.
JAMES H. FOSTER, JOHN A. CRAWFORD, ASHLEY PEARCE, John R. Baltimore, J. L. Liles, E. Walden, and W. H. Galtra. } No. 1258.

JANUARY 23, 1888.

Now, at this day, on motion of Mr. C. E. S. Wood, of counsel for the defendant W. H. Galtra, it is ordered that the demurrer of said defendant W. H. Galtra to the cross-bill of the defendants James H. Foster, John A. Crawford, and William Crawford be, and the same is hereby, set for hearing on Monday, January 30, 1888.

DEADY, *J.*

Endorsed: Filed January 23, 1888. R. H. Lamson, clerk, by R. B. Lamson, deputy clerk.

177 And afterwards, to wit, on Friday, the 6th day of April, 1888, the same being the 107th judicial day of the regular October term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

178 In the Circuit Court of the United States for the District of Oregon.

CHARLES A. NEAL
vs.
JAMES H. FOSTER, JOHN A. CRAWFORD, WILLIAM CRAWford, Ashby Pearce, John R. Baltimore, L. L. Liles, E. Walden, and W. H. Goltra. } No. 1258.

APRIL 6, 1888.

This cause was heard upon the demurrer of the defendant W. H.

Goltra to the cross-bill filed by the defendants James H. Foster, John A. Crawford, and William Crawford, and was argued by Mr. J. K. Weatherford, of counsel for the defendant W. H. Goltra, and by Mr. Earl C. Bronaugh, of counsel for the defendants James H. Foster, John A. Crawford, and William Crawford; on consideration whereof it is ordered and adjudged that said demurrer be, and the same is hereby, overruled.

DEADY, *J.*

Endorsed: Filed April 6, 1888. R. H. Lamson, clerk, by R. B. Lamson, deputy clerk.

179 And afterwards, to wit, on the 6th day of April, 1888, there was duly filed in said court an opinion by the court in words and figures as follows, to wit:

180 U. S. Circuit Court, District of Oregon.

FRIDAY, *April* 6, 1888.

CHARLES A. NEAL
v.
J. H. FOSTER *et al.* } No. 1258.

Suit to set aside conveyances.

(1.) Cross-bill—Right to file.—A cross-bill is a mode of obtaining relief or making a defense to which a defendant may resort as against the plaintiff or a codefendant in the original bill without leave of the court, and the question of his right to file the same when and as it may be done may be made and determined on demurrer.

(2.) Idem.—Where a cross-bill does not seek to introduce new or further testimony on the matters in issue in the original suit it may be filed after publication has passed or the testimony thereabout is taken.

(3.) Idem—Publication.—As the testimony in equity cases is no longer taken secretly or kept from the inspection of the parties until what was called publication, the mere fact of publication having passed or the testimony being closed in the original suit ought not to prevent a defendant from filing and maintaining a cross-bill even touching matters in issue in said suit.

DEADY, *J.*:

The original bill in this case was filed on July 1, 1886, against James H. Foster, John A. Crawford, William Crawford, Ashby Pearce, John R. Baltimore, J. L. Tiles, E. Walden, and W. H. Goltra, and the object of it was to have certain conveyances of real property situate in Albany, Linn county, theretofore made by Foster to the Crawfords and Ashby Pearce set aside as fraudulent.

The other parties, including Goltra, were made defendants in the bill because they were, or claimed to be, judgment creditors of

Foster's, and in their answers they set up their claims accordingly. The Crawfords and Foster answered the bill denying that the conveyances were fraudulent. The plaintiff replied, and on October 7, 1886, the case was referred by the circuit judge to a master, who, on August 29, 1887, filed his report of the evidence taken by him and also his conclusion of fact and law thereon, as directed by the order of reference.

In his answer Goltra states that in February, 1886, he obtained judgment in the State circuit court for the county of Linn against Foster on divers claims for the sum of $16,118.84, for which he claims a lien on the property in question.

On November 14, 1887, the defendants Foster and John A. and William Crawford had leave to file what is styled therein "a supplemental cross-bill," in which it is alleged as a bar to Goltra's claim to enforce his judgment against the property in question that on February 10, 1886, he commenced a suit in the State circuit court aforesaid against the plaintiffs in the cross-bill to enforce the lien of his judgment against the property in question on the ground that the conveyances thereof by Foster to the Crawfords were fraudulent because made with intent to defraud Goltra and other crediters of Foster; that the defendants in said suit answered the complaint denying the allegations of fraud and averring that the conveyances were made in good faith and for an adequate consideration; that Goltra filed a reply to this answer, and upon the issue thus raised the cause was, on July 9, 1886, heard by said court, which found that the conveyances in question were made to the Crawfords in good faith and for an adequate consideration, and decreed that the bill be dismissed and the defendants recover their costs; that Goltra appealed from said decree to the supreme court of the State, where, on April 11, 1887, said appeal was by the order of said supreme court dismissed at the cost of the appellant, whereby the decree of said circuit court of July 9, 1886, remains in full force and effect and is now binding between the parties thereto.

On December 31, 1887, Goltra demurred to the cross-bill. On the argument the objections made to the filing of the bill when the application was made therefor were restated and insisted upon. The point was also made that the cross-bill does not state the facts of the original bill.

The bill states the commencement of the original suit, giving the date thereof and the names of the parties thereto, and adds, "The object and purpose of said original bill being as therein stated and prayed."

The proceedings on the original bill are then stated as above down to the filing of the master's report, to which is added the allegation that Goltra was made a defendant in the original bill as one of the creditors of Foster, while his interest was that of a plaintiff, and by said bill and the report of the master Goltra is represented as being entitled to share in the proceeds that may accrue to the creditors of Foster by virtue of any decree of this court in the original suit.

It is said that the cross-bill should state the original bill or the parties, prayer and object of it, the proceedings thereon, and the right of the plaintiff therein which is sought to be made the subject of the cross-litigation. Story's E. P., § 401; Adams' Eq., 403. In England, where this rule had its origin, a cross-bill might have been filed in another court than that in which the original was pending. Story's E. P., § 400. In such case it would be necessary to set forth the matters in the original bill and its prayer and object, together with the proceedings thereon, if any, so that the court might be possessed of the whole case, of which the cross-bill is only a part; but this practice never obtained in this country. In the national courts at least the cross-bill must, from the necessity of the case, be filed in the circuit court where the original bill is depending.

In such case there is no necessity of bringing the facts of the original bill or its object or prayer to the attention or knowledge of the court by repeating them in the cross-bill, and a mere reference to the bill, which is already before the court, and a part of the case is sufficient for all practical purposes. Of course, it is necessary to set forth in the cross-bill so much of the matter in the original bill and the subsequent pleadings and proceedings thereon as may be necessary to show what right or defense is sought to be brought before the court for adjudication and to make a proper case therefor.

This has been done in this case. Goltra, a defendant in the original bill, but whose interest in the suit is that of a plaintiff, seeks by his answer, in case the court should find that the conveyances by Foster to the Crawfords are void, as to the creditors of the former, and order a sale thereof, to have his judgment against his codefendant Foster satisfied out of the proceeds of the property; and now his codefendants in the original bill, Foster and the Crawfords, seek by the cross-bill to set up, as against him, the defense of a prior adjudication by the State court, as between them, of the question of the validity of the conveyances.

It is admitted that the defense, as stated, is a bar to the demand of Goltra to have his claim satisfied out of the proceeds of this property; that having litigated the question of the validity of the conveyances of the same, as against the creditors of the grantor in the State court with him and his grantees, the Crawfords, he is estopped to allege or claim anything to the contrary of the decree in that suit.

A cross-bill is generally considered and used as a matter of defense, and may answer the purpose of a plea *puis darrein* continuance where the matter of the defense arises after answer. A cross-bill is either brought against the plaintiff in the original bill or one or more of the defendants therein, and the original and cross-bill are considered one cause. 1 Smith's Ch., 459; Story's E. P., 389, 393; Adams' Eq., 402; Field *v.* Scheiffelin, 7 John. Ch., 252; Cross *v.* De Valle, 1 Wall., 14.

It is also maintained that the cross-bill is filed too late, and that nothing has arisen since the commencement of the suit which would justify its filing. This point was made and argued on the application for leave to file the cross-bill, and it is contended that the question cannot now be raised again on the demurrer; but the rule is

otherwise. It was not necessary to give notice of the application for leave to file a cross-bill, nor, so far as I am advised, to obtain leave before doing so. The only case I have found on the subject is Bronson *vs.* La Crosse Railway Company (2 Wall., 283). There a cross-bill filed without leave of the court was set aside as irregular. But it was filed by a person not a party to the suit, who petitioned the court for leave to answer for a defendant corporation, then in default, of which he was a stockholder, and also to file a cross-bill. Leave was given to file the answer, but as to the cross-bill the order of the court was silent. The party filed the answer for the corporation and also a cross-bill, which was subsequently set aside because filed without leave by a stranger to the suit.

A cross-bill is a regular and legitimate proceeding in a court of equity, to which any party defendant may resort in a proper case, without any special leave of the court. But in doing so he must conform to the law or rule which governs the case, or take the consequence. Story says (Eq. Plead., § 632): "A cross-bill will be open to a demurrer if it is filed contrary to the practice of the court and under circumstances in which a pure cross-bill is not allowed."

And as an illustration he cites the case of a cross-bill filed
181 after publication of the testimony in the original suit, which seeks to introduce new testimony as to matters already in issue therein.

It is generally stated in the books that a cross-bill must be filed before publication—that is, before the taking of testimony in the original case is closed and the same opened to the inspection of the parties or published—unless where some new matter, as a release, arises afterwards or the case appears at the hearing too imperfect to reach and settle the rights of all the parties.

As an illustration of the reason of this restriction Chancellor Kent, in Field *v.* Schuffelin (7 John. Ch., 253), says: "It is too late, after publication, to introduce new and further testimony to the matter in issue by the contrivance of a cross-bill. It would be doing, in an indirect way, *per obliquum*, what is forbidden to be done directly"—referring to Hamersley *v.* Lambert (2 John. Ch., 432).

The reason given for this is that if after the publication of the testimony and the defendant has found out wherein it is defective, he was allowed to supply the same by suppletory proof taken on a cross-bill, there would be great danger of perjury and fraud. Field *v.* Schufflen, 7 John. Ch., 254; Story's E. P., § 395.

But the fact on which this artificial superstructure of caution and prevention is raised has long since ceased to exist in the courts of the United States. At one time all testimony taken in a suit in equity was taken by examiners or commissioners on written interrogatories, and neither the parties nor their attorneys were allowed to be present at the examination, while the persons before whom the testimony was taken were sworn to secrecy. 1 Smith's Ch., 40, 361–374, 356–359. The testimony was then returned into court sealed up, and remained so until the taking of testimony in the case was closed, when an order of publication was passed and the depositions were opened.

Now, however, under equity rule 67 the testimony may be taken orally before an examiner in the presence of the parties and their attorneys, who propound the interrogatories, and when taken on commission and written interrogatories the depositions may be and usually are opened and inspected as soon as returned to the clerk's office. In other words, there is no longer any secrecy in the premises, and there is now no reason why the period or fact of publication should be arbitrarily prescribed as the point of time beyond which a cross-bill cannot be filed. The court may, *sua sponte*, direct the filing of a cross-bill when it appears necessary to a complete determination of the case at any time before final decree, and, in my judgment, there ought to be no fixed rule against a defendant's filing a cross-bill in a proper case before the final hearing, the objection of laches being disposed of in each case on the particular circumstances thereof or by rule of court or the Supreme Court.

But even under the old state of things the objection to filing a cross-bill after publication had passed was really confined to cases, or at least the reason given for it would so confine it, where the cross-bill sought to introduce new or further testimony concerning the matters already in issue; but this bill seeks nothing of the kind. It sets up a prior determination between the plaintiffs therein and the defendant Goltra of the question of the validity of the conveyances to the Crawfords, a matter which is not mentioned in the original bill or the answers thereto, and about which no testimony could have been taken, and concerning which there can be no danger of perjury, for it must be proved, if at all, by the record.

The application for leave to file the cross-bill was placed on the ground that the defense did not arise until April 11, 1887, when the suit of Goltra against Foster and the Crawfords was finally determined in the supreme court by the dismissal of the appeal, and therefore it was in the nature of a plea *puis darrein* continuance. This conclusion was based on the theory that the decree of the State circuit court in Goltra *v.* Foster *et al.* was suspended during the appeal and could not be used as an estoppel while the appeal was pending, according to the ruling in California under a similar statute, which declares that "an action or suit is deemed to be pending from the commencement thereof until its final determination upon appeal or until the expiration of the period allowed to take an appeal." Or. Code C. P., § 505. See Sharon *v.* Hill, 11 Saw., 302. But the supreme court of the State, in Day *v.* Holland (15 Pac. Rep., 855), have since held otherwise, and said in effect that the decree of the lower court was operative for all purposes during the appeal as well as the period allowed for taking it. And so in the light of this decision the right to file the cross-bill cannot be rested on this ground.

It may be taken for granted that the plaintiffs in the cross-bill could not have the relief prayed for therein as against their co-defendant Goltra by answer or otherwise than by cross-bill.

The filing of the bill took place before the cause was submitted for final hearing. It sets up a simple, distinct offense against Goltra's right to have his judgment satisfied out of this property.

As it rests on an alleged record, the determination of its truth or sufficiency cannot materially delay or prejudice the final disposition of the case. Under the circumstances I do not think the demurrer to the bill ought to be sustained on the ground of delay in filing the same. Some other causes of demurer of are assigned, but as they were not noticed in the argument and do not appear to be material they need not be considered.

The demurrer is overruled.

Mr. Earl C. Bronaugh, for the plaintiffs in the cross-bill.

Mr. James K. Weatherford, for the defendant therein.

(Signed) MATTHEW P. DEADY,
U. S. District Judge, Oregon.

Endorsed: Filed April 6, 1888. R. H. Lamson, clerk.

182 And afterwards, to wit, on Monday, the 20th day of August, 1888, the same being the 68th judicial day of the regular April term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

183 In the Circuit Court of the United States for the District of Oregon.

CHARLES A. NEAL *vs.* JAMES H. FOSTER, JOHN A. CRAWFORD, WILLIAM CRAWFORD, Ashby Pearce, John R. Baltimore, J. S. Liles, E. Walden, and W. H. Goltra.	No. 1258.

AUGUST 20, 1888.

This cause was heard upon the bill, the answers of the several defendants thereto, the cross-bill of the defendants James H. Foster, John A. Crawford, and William Crawford, and the admission by the defendant therein, W. H. Goltra, that the same be taken for confessed, the testimony and the exceptions to the master's report, and was argued by Mr. George H. Williams and Mr. C. E. S. Wood, of counsel for the plaintiff; Mr. J. K. Weatherford and Mr. C. E. Wolverton, of counsel for the defendants John R. Baltimore, J. S. Liles, E. Walden, and W. H. Goltra, and by Mr. Earl C. Bronaugh and Mr. L. A. Flinn, of counsel for the defendants James H. Foster, John A. Crawford, William Crawford, and Ashby Pearce. On consideration whereof the court finds that the several conveyances in the bill mentioned and described from James H. Foster to John A. Crawford and to Ashby Pearce, respectively, were made for a valuable consideration and without intent to hinder, delay, and defraud the creditors of said James H. Foster; that the conveyance in said bill described, made by said James H. Foster on February fourth, eighteen hundred and eighty-four, to said William Crawford, and conveying to said William Crawford the following-described property, to wit: Commencing eight feet west of the southeast corner of lot four, in block six, on First street, in the city of Albany, Linn

county, Oregon, at the center of the wall between the building known as the "Foster block" and that now owned by Otto Fox and occupied by J. Gradwohl, running thence west parallel with said street seventy-four feet to the center of the partition wall
184 between said Foster block and the building formerly occupied by Monteith and Lentenbach, and from thence north one hundred feet to the alley; thence east at right angles along the alley seventy-four feet to a point parallel with the place of beginning, and from thence south parallel with the center line first above described to the place of beginning, so as to include the brick store now occupied by Mason and Foshay, G. E. Blain, Wilt Brothers, and Mr. Ewart's jewelry store, with the offices and halls above, with all and singular their rights and appurtenances of every name, nature, and description, said conveyance being recorded in Book "Z" of Deeds for Linn county, Oregon, page five hundred and twenty-one, was made without consideration and with the intent to hinder, delay, and defraud the creditors of said James H. Foster; that at the respective dates of the judgments against the defendant James H. Foster, as alleged in the pleadings herein, the legal title to the property described in the conveyances aforesaid had passed to the respective grantees in said conveyances mentioned and none of the plaintiffs in said judgments thereby acquired any lien upon said property; that at the date of the said conveyances and at the commencement of this suit the defendant James H. Foster was wholly insolvent. It is therefore adjudged and decreed that the bill herein be, and the same is hereby, dismissed as to the defendants John A. Crawford and Ashby Pearce, and that they have and recover off and from the plaintiff their several costs and disbursements herein to be taxed; that the conveyance aforesaid of the property herein described, made by the defendant James H. Foster to the defendant William Crawford, is fraudulent and void, and that the same be, and hereby is, set aside and held for naught; that the property described and included in said conveyance to said William Crawford be
185 sold as upon an execution by Mr. George H. Durham, master of this court, and the proceeds applied as follows: First, to the satisfaction of the judgments of the plaintiff, Charles A. Neal, to wit, the sum of fourteen thousand and forty-six dollars and seventy-two cents, and the further sum of one thousand nine hundred and twenty dollars and thirty-five cents, with interest on both said sums from March eighth, eighteen hundred and eighty-six, at eight per cent. per annum, and to the payment of the taxable costs and disbursements of said plaintiff and for the expenses of said sale; second, to the satisfaction of the following judgments, to be paid *pro rata* among themselves if there be insufficient surplus to satisfy the same in full: E. Walden, five hundred and sixty-nine dollars and ten cents, with interest thereon at ten per cent. per annum from February twenty-third, eighteen hundred and eighty-six; J. S. Liles, one thousand and forty-nine dollars and thirty-five cents, with interest thereon at ten per cent. per annum from March twelfth, eighteen hundred and eighty-six; John R. Baltimore, one thousand six hundred and two dollars and ninety-two cents, with interest

thereon at ten per cent. per annum from March tenth, eighteen hundred and eighty-six, and to the payment of the taxable costs and disbursements of these defendants; that the cross-bill aforesaid having been taken for confessed as against the defendant W. H. Goltra, he is estopped to say or maintain that said conveyance is fraudulent as between him and the defendants James H. Foster and William Crawford, or to have the same set aside or to share in the proceeds of the sale of the property included therein under this decree; that if the proceeds of said sale are insufficient to satisfy the judgments of said plaintiff and his costs and disbursements in this suit and the expenses of said sale that said plaintiff, upon due notice, may have an execution to satisfy said costs,
186 disbursements, and expenses against the property of the defendant William Crawford; and it further appearing from the records of the court that this cause was argued and submitted on April seventeenth, eighteen hundred and eighty-eight, and from the affidavit of Mr. C. E. S. Wood, duly filed herein, that the defendant James H. Foster died since said date and during the present term of this court, to wit, in June, eighteen hundred and eighty-eight, it is further adjudged and decreed that this decree be entered *nunc pro tunc* as and for May second, eighteen hundred and eighty-eight.

(Signed) DEADY, *J.*

Endorsed: Filed Aug. 20, 1888. R. H. Lamson, clerk.

187 And afterwards, to wit, on the 20th day of August, 1888, there was duly filed in said court an opinion by the court in words and figures as follows, to wit:

188 United States Circuit, District of Oregon.

MONDAY, *August* 20, 1888.

CHARLES A. NEAL
v.
JAMES H. FOSTER *et al.* } No. 1258.

Suit to enforce judgments.

(1.) Res adjudica-t.—The determination of a point or question in any legal proceeding binds the parties thereto and their privies in any subsequent litigation that may arise between them, although the cause of action in the two proceedings is not otherwise identical.

(2.) Vendor in possession—Acts and declaration of.—The acts and declarations of a vendor in possession after the sale are competent evidence against the vendee on the question of the character and purpose of such sale.

(3.) Taxation of credits.—A person cannot lawfully nor truthfully omit a note from his statement of his taxable credits on the ground that there is an understanding between him and the maker thereof that he will not deduct the amount of the same from the value of his property listed for taxation.

(4.) Motive of suitor in national court.—The motive with which a person purchases property or a claim has nothing to do with his right to maintain an action thereon or thereabout in the national courts, and so it does not affect the jurisdiction of said courts if the purchase is made with the expressed intention of suing therein.

(5.) Lien of judgment.—A conveyance of real property, though void as to creditors asserting their right against it, passes all the estate of the grantor in the premises to the grantee, and therefore the lien of a subsequent judgment against the grantor, which only attaches to property then belonging to him, does not affect the property so conveyed; and the creditor first seeking to set aside such conveyance obtains a prior right to satisfaction thereout from the commencement of his suit for that purpose.

(6.) Fraudulent conveyance.—The grantee in a conveyance of real property by an insolvent debtor having paid at least three-fourths of its cash value therefor by the redemption of certain wheat warehouse receipts of the grantor concerning which he was then liable to a criminal prosecution and the discharge of certain obligations on which he was surety, held that the circumstances do not warrant the conclusion that the conveyance was made or taken with intent to hinder, delay, or defraud creditors.

(7.) A conveyance by an insolvent debtor of a block of brick buildings for the alleged consideration of the surrender of six notes of the grantor for the principal sum of $16,000, payable to the grantee, which notes are in fact without consideration, held that the conveyance was voluntary and therefore fraudulent as against the creditors of the grantor.

DEADY, *J.*:

This suit is brought by the plaintiff, a citizen of Illinois, against James A. Foster, John A. Crawford, William Crawford, and Ashby Pearce, citizens of Oregon. The plaintiff sues as the assignee and owner of two certain judgments against the defendant Foster and to set aside as fraudulent three certain conveyances executed by Foster to John A. Crawford, William Crawford, and Ashby Pearce, respectively. William H. Goltra, E. Walden, John R. Baltimore, and J. S. Liles, citizens of Oregon and judgment creditors of Foster, are also made parties defendant.

It is alleged in the bill that on and prior to February 6, 1884, Foster was indebted to Sibson, Church & Co. in the sum of $13,034.96, which claim was, on July 15, 1885, assigned to Sibson, Quackenbush & Co., who on March 8, 1886, obtained judgment thereon for $14,066.72 in the circuit court of Linn county, Oregon, which judgment was then docketed therein, and on March 15th an execution issued thereon and was returned unsatisfied; that on June 11, 1886, Sibson, Quackenbush & Co. sold and assigned said judgment to the plaintiff, who now owns the same.

That on March 8, 1886, Noon & Co. obtained a judgment in said cir-

cuit court against Foster on a promissory note and account for goods in the sum of $1,920.35, which judgment was then docketed therein, and on March 15th an execution issued thereon and was returned unsatisfied; and that on June 19th Noon & Co. sold and assigned said judgment to the plaintiff, who now owns the same.

That when said debts were contracted on which said judgments were obtained Foster was the acknowledged owner of the following real property situate in Albany, in said county and State: (1) The Magnolia flouring mill and lot, including the race connecting the mill with the Santiam water ditch; (2) block 55, except two lots; (3) lot one, in block eleven; (4) one-half interest in the Albany water works; (5) a parcel of land seventy-four feet by *a* 100, with brick buildings thereon, and (6) part of lot seven, in block four, with a brick store thereon; that on February 6, 1886, Foster conveyed all of said property except the fifth and sixth items to the defendant John A. Crawford, and on the same day conveyed the fifth item to the defendant William Crawford, and on February 7th conveyed the sixth item to the defendant Ashby Pearce; that each of said conveyances was voluntary and without consideration, and was made by the grantor and accepted by the grantee therein with intent to hinder, delay, and defraud the creditors of Foster, and particularly the assignors of the plaintiff, Sibson, Quackenbush & Co., and Noon & Co.; that Foster is insolvent; that the property so conveyed was then worth $110,000 and was all the property Foster had, and he is still in the possession and enjoyment of the same.

That subsequent to said conveyances the other defendants herein obtained judgments in said circuit court against Foster as follows: Baltimore, March 10, 1884, for $1,652.92; Goltra, February 23, 1886, for $1,636.90; Liles, March 12, 1886, for $1,049.75, and Walden, February 23, 1886, for $568.50.

The prayer of the bill is that the conveyances be set aside as fraudulent and the property be sold to pay the claims of the plaintiff and the defendants Baltimore, Goltra, Liles, and Walden according to their respective priorities.

The defendants Foster and the Crawfords, by their joint answer, admit the judgments against Foster as stated in the bill, but deny that the plaintiff is the owner of any of them, and allege that the assignments thereof to him by S., Q. & Co. and N. & Co. were made without consideration and for the sole purpose of giving this court jurisdiction. They admit the execution of the conveyances to the Crawfords and Pearce as stated in the bill, but deny that they are voluntary or were made or accepted with intent to hinder, delay, or defraud creditors, and allege that at the date thereof Foster was short about 20,000 bushels of wheat, for which he had given receipts, and that Foster conveyed the items one, two, three, four, and five of said property and certain book accounts and grain sacks to the Crawfords in consideration of John A. Crawford's taking up those receipts, and $64,000 to be paid him by the surrender of certain notes and an account due from Foster to said John A. and certain other notes due from Foster to William Crawford, and the payment by John A. of certain notes of Foster's on which he was

surety, and that the conveyance to Pearce was made, subject to Mrs. Foster's right of dower, in consideration of the payment by him of $4,000 as security for Foster.

They admit that on, prior, and since February 6, 1884, Foster was and is insolvent, and aver that the property conveyed is not worth more than $56,000.

The defendants Baltimore, Liles, Walden, and Goltra answer the bill jointly, admitting the allegations thereof, and that they are severally the owners of the certain judgments obtained by them in 1886 in the circuit court of Linn county, Oregon, against Foster, as alleged in the bill, and also allege that Goltra is the owner of a certain other judgment obtained by him in said circuit court on February 23, 1886, against said Foster, on twelve promissory notes and one account theretofore assigned to him, for the sum of $16,119.70, which judgments they allege are each a lien on the property of Foster in said county, and that the property conveyed to the Crawfords and Pearce was so conveyed with intent to hinder, delay, and defraud the creditors of Foster, including the defendants.

Afterwards the defendants Foster and the two Crawfords filed a cross-bill, alleging therein that on February 10, 1886, Goltra commenced a suit in the circuit court aforesaid against the plaintiffs in the cross-bill to enforce the judgment for $16,119.70 theretofore obtained against Foster, as stated in his answer herein, against the property in question, on the ground that the conveyances thereof by Foster to the Crawfords and Pearce were invalid, because made with intent to hinder, delay, and defraud the creditors of the grantor, including Goltra and his assignors; that the defendants in said suit answered the complaint therein, denying the allegations of fraud and alleging that said conveyances were made in good faith and for an adequate consideration, to which answer there was a reply by Goltra; that the cause was heard on the issue thus made, when the court, on July 9, 1886, found in favor of the defendants and dismissed the suit; that Goltra took an appeal to the supreme court of the State, where on April 11, 1887, said appeal was dismissed, whereby the judgment of said circuit court remains in full force and effect and Goltra is thereby estopped to say
189 that said conveyances are invalid for the reason assigned.

A demurrer to this cross-bill was overruled and the same taken for confessed. (34 Fed. Rep., 496.) And it is now admitted by counsel that Goltra is estopped to say in this suit, in support of said judgment, that these conveyances are invalid, because made in fraud of creditors.

But counsel maintained that the judgment of Goltra, obtained on February 23 for $1,637.20, is not within the operation of said estoppel, because the judgment was not included in the suit out of which the estoppel arises. It is true that the decree in the former case between the parties to the cross-bill was given in a suit in which the right to enforce this particular judgment against this property was not involved. But the question on which such right depends was so involved. A question contested and determined in one case

is determined, so far as the parties to the same are concerned, for all time and all purposes. It cannot be ground over again in another action.

The question of the validity of Foster's conveyances to the Crawfords and Pearce for the cause alleged, namely, that they were executed with intent to hinder, delay, and defraud creditors, was the principal and only contested question in the suit of Goltra *v.* Foster and the Crawfords, and the decision therein that they were not so executed estops the parties and their privies to allege or maintain aught to the contrary in this or any other litigation between them. Outram *v.* Morewood, 3 East, 346; Cromwell *v.* County of Sac, 94 U. S., 351; Wilson's Ex. *v.* Deen, 121 U. S., 525; Bigelow Estop., 48; U. S. *v.* Schneider, 35 Fed. Rep., 107.

This disposes of the case made in the cross-bill. Goltra is estopped to allege or contend that the conveyances in question are fraudulent. That identical point was found against him in the former suit, and therefore as against Foster or his grantees he cannot make or state a case that will entitle him to subject the property to the satisfaction of either of his judgments against the former.

In the progress of the case it was referred by the circuit judge to a master to take the testimony and report the same with his conclusions of fact and law thereon. The report finds (1) that at the commencement of this suit the several judgments mentioned in the pleadings were owned by the plaintiffs therein except those of Noon & Co. and Sibson, Quackenbush & Co., which had been theretofore duly assigned to the plaintiff, who was the owner thereof; (2) that the conveyances to Pearce and John A. Crawford were made in good faith and for "full value," while that to William Crawford was made without consideration and is void as against the plaintiff and other creditors of said Foster; (3) that on February 6, 1884, the date of said conveyances, and since, Foster was insolvent and has no property out of which any of such judgments can be made; (4) that the real property conveyed to John A. Crawford was at the date of the conveyance thereof worth $36,000, in addition to which he then received from Foster accounts and grain sacks worth $6,000, in all $42,000, and that Foster then owed said Crawford on notes and accounts $27,733.50, while the latter was liable to pay for the former, as surety, about $16,000, all of which debts and liabilities he released and paid, and also made good to sundry persons a deficiency in wheat in the mill warehouse of near 20,000 bushels, which cost him near $10,000 more—in all, $53,733.50; (5) that at the date of the conveyance to Pearce he was an accommodation endorser for Foster on a note for $5,000 that he afterwards paid; that the real property conveyed to him was worth $3,500, in addition to which he received $700 worth of mill products; that the property conveyed to William Crawford was then worth $18,000, upon which he has since expended in permanent improvements the sum of $2,000.

Both parties excepted to the master's report, the plaintiff to the finding in relation to the conveyances to John A. Crawford and

Pearce, and the defendant William Crawford to the finding concerning the conveyance to himself.

On the argument it was tacitly conceded that the conveyance to Pearce was made for a full consideration as found by the master, and with no other purpose than to prefer him to other creditors, as the grantor lawfully might, and of this there can be no doubt on the testimony.

At and before February 6, 1884, Foster was in a financial strait. By a reason of a decline in flour during the winter he had lost or failed to realize $1 a barrel on about 30,000 barrels shipped to Liverpool. He was also short about 20,000 bushels of wheat, for which he had given receipts, on any one of which he was liable at any moment to a criminal prosecution. There is no room to doubt that John A. Crawford was then liable as surety on Foster's paper for $15,900, namely, to the Bank of British Columbia, $5,000; to John Conner and the Bank of Albany, $6,000, and to Frank Parton, $4,900, and that he afterwards paid the same as part of the consideration for the transfer to him.

Neither is there any room to doubt that Crawford settled with the farmers and others, holding Foster's wheat receipts for 19,541 bushels of wheat that the latter had used; but the amount disbursed for this purpose is not certain. The evidence on the point is not clear or satisfactory. Wheat at the time of the transfer was ninety cents per bushel; but it was rapidly declining and soon fell to near fifty cents. It is altogether probable that from $10,000 to $15,000 was paid out for Foster on this score—say $12,500. This, added to the amount paid by Crawford as surety or indorser, makes $28,310 paid on the property in cash. In addition Crawford claims to have turned in an open account of $5,803 against Foster as a part of the consideration for the purchase. Under the circumstances the claim is a probable one. Crawford seems to have been carrying Foster in every direction; and on the proof it cannot be rejected. This, with the cash, makes a consideration of $34,113 paid for the property, real and personal, more than it would have probably sold for at sheriff's sale and more than three-fourths of the value that the master places upon it, which in my judgment is its full market value.

If the purchase was made in good faith—that is, for the purpose of providing for the payment of the debts due the purchaser or the obligations on which he was surety for the grantor, and not merely to hinder, delay, and defraud creditors—the conveyance is not within the statute of frauds and is valid. The amount and character of the consideration is not material, except as it may affect the question of good faith. Bump F. C., 207. Neither the amount nor character of this consideration tend to prove that the purchase was not made in good faith.

The only specific circumstance urged against the good faith of this transfer is the fact that Foster remained in possession of the mill and dwelling-house and his declarations while there. The acts and declarations of a vendor in possession after the sale are competent evidence against the vendee on the question of the character

and purpose of such sale and possession. Bump F. C., 569; U. S. *v.* Griswold, 7 Saw., 316. But such acts and declarations are not conclusive, and must be considered in the light of all the circumstances. Mr. Foster was an old man who had done business in Albany as merchant and miller for over thirty years. When he failed and transferred his property to his life-long friend and principal creditor, John A. Crawford, it was not unreasonable nor out of the ordinary course of business for the latter, who was over 70 years of age and had been out of the milling business for many years and was otherwise much engaged to retain Foster as superintendent of the mill, both for his own interest as well as a kindly consideration for Foster, who was then thrown on the world without any visible means of support, at a compensation of $75 per month and the use of the dwelling-house in which he lived; but Foster's declarations to his other creditors, all of whom are represented in the several judgments mentioned in the pleadings, do indicate that he expected to get the mill back again, either as owner or lessee of Crawford, in which case, if times "livened up," he would be able to pay all his debts from the profits of the mill; but I am satisfied he either went beyond the fact or his hearers, smarting under the loss of their claims, have remembered and repeated his statements for more than they were worth. As is said by counsel in the brief for plaintiff, "each of these witnesses was not only a friend of many years' standing with Foster, but also a creditor. Some of them had sold him wheat only a few days before the transfer, and in the presence of men whom he had so wronged * * * and who, nevertheless, still displayed some old-time loyalty and friendship towards him, it is quite natural he should seek to placate them and restore himself in their esteem by an explanation that would not leave them hopeless."

Under these circumstances Foster might have made statements and held out hopes that implied in the willing minds of his
190 anxious hearers that, after all, the transfer was only a contrivance to tide over a financial difficulty, and in the meantime Crawford was only holding the property in trust for him.

One form of declaration attributed to him is "that if he could make arrangements with his creditors he could lease the mill and pay them off, if times 'livened up,' out of the profit of it." And this declaration is perfectly compatible with a *bona fide* sale. Neither would it be difficult or extraordinary for those who would have it so to remember and relate how Foster said "he was going to get the mill back again as soon as he could arrange with his creditors," with the implication, of course, that such was the purpose of conveying it to Crawford.

However this may be, there is nothing in Foster's possession or presence at the mill or employment by Crawford inconsistent with good faith on the part of the purchaser; and so far as any of his declarations import the contrary, assuming that he has been correctly reported, they are easily accounted for, and are also contradicted by the admitted and controlling circumstances of the case.

The evidence as to whether Crawford also turned in Foster's three

notes in part payment of this property is conflicting, but I think the weight of it is that he did.

Crawford and Foster both swear that in 1876 the mill firm of James H. Foster & Co.—the company being the brother, John Foster—dissolved and James H. took the business and agreed to pay the debts. At that time Crawford held three notes of J. H. Foster & Co., dated early in July, 1875, for an aggregate sum of $12,593, with interest. The notes are produced and their existence is satisfactorily established. On April 28, 1876, on a settlement with Crawford, Foster gave his two individual notes for the three company notes and interest, payable one day after date, with interest at ten per centum per annum, the one for $8,605 and the other for $5,325, or $13,930 in the aggregate; and on September 12, 1878, Foster gave Crawford another note for $3,000, payable one year after date with like interest, for money then loaned him. On the first of these notes there is endorsed a payment of $1,721 of interest, dated April 27, 1878, and on the second a like payment at the same date of $1,065. On the third note there is an endorsement of $350, dated June 19, 1882, which was afterwards canceled. No other payments appear to have been made on either of these notes prior to February 6, 1884, when it is claimed they were returned to Foster in part payment of this property. The notes are produced, and I think there is no doubt that they are genuine. There appears to have been a sufficient reason for their making. The old notes were partnership ones, that James H. Foster had promised his brother to take up, which he did by giving his own in their place.

The contention of the plaintiff is that, admitting their genuineness, they were paid some time, but he cannot say when, before the transfer of the property, when they were fraudulently revived for the purpose of being made a part of the consideration of such transfer.

Both Crawford and Foster swear positively that the notes were due and unpaid according to their face at the time of the transfer, and that they constituted a part of the consideration thereof, and there is no direct evidence to the contrary. But there are some circumstances in the case which contradict them with more or less force.

It is very unusual that notes of this amount—$16,930—are allowed by business men to go unpaid and unsecured for a period of twelve years, and that without the payment of interest for the last two-thirds of that time; still the matter is not so improbable as to prevent belief when supported by the direct evidence of the parties.

On September 24, 1881, Crawford stated under oath, in writing, to the assessor of Linn county, that the notes then owned by him and liable to taxation in the State only amounted to $5,500. On June 7, 1883, he made an affidavit to procure a decrease of his assessment for 1882, in which he stated that the gross amount of his "money, notes, and accounts" subject to taxation was only $13,500.

Crawford's explanation of the apparent omission in both these statements of these three Foster notes is, there was an agreement between himself and Foster that, on account of the interest on these notes being 10 per centum instead of 12, the maximum allowed by law, the latter would pay the taxes thereon—that is, he would not

deduct the amount from the value of his property assessed for taxation.

The explanation is open to the criticism that it is easily made and hard to contradict. But counsel says, if it is not true, the record of the assessments for the county will show it, at least negatively; and as the plaintiff has not produced this evidence, as it was in his power to do, the presumption is that it would so far corroborate the testimony of the defendants. At first blush this seems plausible, but if the fact is, as the plaintiff claims, these notes were paid, the record of the assessments would equally show that Foster did not deduct this indebtedness from his assessment, not for the reason given, but because it did not exist, at least from the time of such payment.

It may be admitted that a debtor and creditor may honestly make an agreement by which the former agrees not to deduct his indebtedness to the latter from the value of his property assessed for taxation, in consideration of which the creditor may honestly conclude that such indebtedness need not be returned by him for taxation as a credit liable thereto. Most persons are disposed to construe the law so as to keep out of the assessor's books as much as possible, but the law is otherwise, except in the case of a note secured by mortgage since 1882, and the creditor when called on to swear to the amount of credits belonging to him and subject to taxation in his hands cannot lawfully or truthfully omit such credit from his return. But Crawford may have believed that the Foster notes held by him under the agreement stated were not liable to taxation *eo nomine*, because a tax on the value of the same was being paid by the debtor as a condition of the credit. And therefore while the failure of Crawford to return these notes for taxation is some evidence that they did not then exist as a legal obligation against Foster—a living credit subject to taxation—it is neither conclusive nor cogent on that point.

The defendant Goltra also testifies that in June, 1883, in talking with Crawford about Foster's financial condition, he said: "People think that Foster owes you considerable or you have an interest in the mill," when Crawford said: "He neither owes me nor have I any interest in the mill." It is admitted he had no interest in the mill, and Crawford denies that he said Foster owed him nothing; and, all things considered, the denial at least neutralizes the assertion.

On this point my conclusion is that the weight of the evidence is that the three Foster notes in question were existing obligations between the parties at the date of the transfer, and that, whether this be so or not, the purchase was made in good faith and for a valuable and even adequate consideration.

As to the purchase of the brick block by William Crawford, it is practically admitted that on July 20, 1867, William Crawford sold the mill in question to James H. and John Foster for $16,000—$6,000 paid in cash and $10,000 by the five joint notes of the purchasers for $2,000 each, payable in one, two, three, four, and five years, respectively, with interest at ten per centum per annum, secured by a mortgage on the premises. The notes are in evidence and each of them bears endorsements of payments of interest thereon,

as follows: July 20, 1869, $400; July 20, 1875, $1,200, and April 15, 1881, $478.75.

All the business of William Crawford with Foster appears to have been transacted by John A. Crawford as his agent.

Crawford and Foster testify that about July 20, 1883, these five notes were unpaid except as shown by the endorsements thereon, when they were by consent of parties exchanged for six notes signed by James H. Foster as J. H. Foster & Co., five of them being for $2,000 each, payable in one, two, three, four, and five years from date, with interest at eight per centum per annum, and the sixth one for $6,000, the amount of the overdue interest on the first five notes, payable in one year from date, without interest. These notes are also in evidence, and it appears from the testimony of Crawford that the exchange was made later than July 20th, and the notes were antedated so as to make the old ones expire with the even year. They also testify that at the date of the transfer the second series of notes were due and altogether unpaid and were given up to Foster in consideration of the conveyance to William Crawford of the brick block in question. William Crawford also testifies to the same effect so far as he knows. He says the first series of notes were unpaid when his brother John got them from him for the purpose of making the exchange and that the second series were unpaid
191 when at his brother's suggestion he gave them to him for the purpose of purchasing the property then conveyed to him by Foster.

This is an improbable statement in all its essential features, though it may be true. Men do not usually allow debts of this character to run on for years without payment of the principal and comparatively little interest. The principal reason for changing the notes, that the legal rate of interest had in the meantime (Oct. 25, 1880,) been reduced to eight per centum, is not satisfactory or convincing. Notwithstanding the change in the law, parties might still contract for 10 per centum, and contracts made before the change were not affected by it. Comp. 1887, §§ 3587, 3592. The exchange was not made until nearly three years after the change in the law, which did not affect the notes in any way, and could not reasonably have been the cause of the exchange. But if the creditor thought eight per centum was as much as the debtor ought to pay under the circumstances there was nothing to prevent reducing it either by new notes or a memorandum on the old ones without any reference to the change in the law or what the law might allow him to take.

On September 17, 1881, William Crawford made oath before the assessor of Linn county in writing that the notes owned by him and liable to taxation in the State amounted in value to only $5,000. John A. Crawford makes the same explanation of this matter that he did concerning the omission to return his own Foster notes for taxation; that Foster was not to deduct the value of them from his assessment. But Foster says he did not make the deduction, because Crawford did not charge him interest on the interest in arrear.

After the mortgage tax law of 1882 went into effect, in July, 1883,

Mr. C. H. Stewart, the county clerk of Linn county, in looking over the record of mortgages for the purpose of making an abstract thereof for the assessor, found a mortgage of many years' standing from Foster to William Crawford on the mill property in question, given to secure the payment of a sum which then amounted, principal and interest, to about $25,000. He naturally supposed from the circumstances that it had been satisfied, and at once wrote to Mr. William Crawford to call and make the proper credits or cancellation, or it would be returned to the assessor as in force. Mr. Crawford called immediately—on July 31—and said the mortgage had been paid several years before, and that he had no knowledge of it being on the books of record, and then and there canceled it.

Mr. Stewart also testified that a few days before the conveyances in question were filed with him for record John A. Crawford was in his office and spoke of the transfer of Foster's property, and said he was compelled to take it to protect himself; that he had endorsed largely for Foster and thought the notes were paid, but they had lately "turned up" in Portland, and that the purchase notes for the mill had been sold and endorsed away by him long before, and he thought they were paid, but now they had "turned up" also, in Portland, unpaid.

I attach much importance to the testimony of this witness. His official position implies public confidence in his integrity. He speaks cautiously, and a rigid cross-examination only served to confirm and strengthen his opening statement. He cannot well be mistaken about the interview with William Crawford, nor the cause nor consequence of it. They affected his official duties, and the record of the cancellation corresponds with his statement. The conversation with John A. Crawford was on a subject that was then attracting the attention of that public, and was calculated to make an impression on him. Moreover, the witness, unlike some of those who testify to other alleged conversations in this case, has no grievance against Foster or the Crawfords, but is disinterested and apparently unprejudiced.

True, it now appears that these mill notes were not endorsed to any one; and, if they had been, Crawford would have had no right to cancel the mortgage. But this false statement as to the cause and consideration of the transfer of this block is at least a badge of fraud. Bump F. C., 42. William Crawford's action in canceling the mortgage, with the declaration that it had been paid several years before, tells a different story.

John Conner, a banker of Albany, testifies that between 1878 and 1880, he thinks in 1879, Foster was owing him $20,000 of borrowed money, when his cashier informed him that this Foster mortgage was on record uncanceled; whereupon he spoke to Foster on the subject, who replied "it had been paid and settled."

It may be admitted that this declaration of Foster's is not competent evidence in chief against William Crawford to prove the payment of these notes. But Foster is introduced as a witness by Crawford to prove that the notes were not paid at the time of the transfer, and the plaintiff has a right to impeach him by evidence

of contradictory statements made out of court. Mr. Conner is a disinterested witness, and no one questions that Foster made this statement to him. The effect of his testimony is to make Foster's now statement, that the notes were unpaid, of no effect. This leaves the fact of their non-payment at the time of the transfer to rest on the testimony of the Crawfords, which is also materially affected by their declarations and acts to the contrary out of court.

In addition to the evidence of these disinterested witnesses, the unpaid creditors and others interested against the Crawfords testify to various conversations with John A., which strongly imply, when they do not assent, that the mill notes were paid before the transfer.

Thomas I. Anderson testifies that thirteen or fourteen months before the transfer he asked John A. Crawford if he had anything to do with the mill, when he answered, "Oh, that is all settled. I have nothing more to do with the mill than you have."

It is true that John A. had then nothing to do with the mill in his own right, nor, so far as appears, ever had. But he always speaks in the first person when speaking for his brother William or of his affairs; and what he meant to say was "all settled" concerning this mill, unless it was William's mortgage thereon, is past finding out.

Thomas Monteith testifies that in the latter part of 1883 he had a conversation with John A., in which the latter said that Foster seemed to be getting along well, when he said, "Why don't he pay off the mortgage that has been on record, then, ever since he bought the mill?" when John A. replied, "Why, that mortgage was paid off long ago."

There never was but one mortgage between Foster and the Crawfords, and that was the one to William on the mill, and, unless these witnesses are false or mistaken, John A. said to them in effect, if not in words, these mill notes are paid off.

In answer to the testimony of all these witnesses concerning these statements of his, John A. Crawford, when called as a witness for himself, can only say, "I do not remember."

Another circumstance of which there is no doubt is entitled to some weight in this connection.

Between the giving of the mill notes in 1867 and the transfer in 1884 Foster expended $40,000 on the mill property in repairs and improvements. He also built the brick block in question, which cost him probably not less than $12,000, his dwelling-house, and his share of the water works. To my mind it is quite improbable that a person with this amount of money at his disposal would allow a mortgage to secure a debt of $10,000 to remain on his mill for seventeen years; and it is equally improbable that William Crawford or his other self, John A. Crawford, would allow the unpaid interest on such debt to accumulate to $6,000 and then take a note for the amount without interest or security. Being unable to deny the cancellation of the mortgage as stated by Stewart, the Crawfords offer in their testimony this explanation: It was done to avoid the operation of the mortgage tax law of 1882. In other words, they swear that rather than pay the taxes on the mortgage they released se-

curity for the debt, and this, notwithstanding the law of 1854, gave the mortgagee the right to pay the taxes on the whole interest in the land and add the same to the mortgage if not paid by Foster. Dundee, etc., Co. *v.* School District, 10 Saw., 61.

On the whole, my conclusion is that the mill notes were paid before the conveyance to William Crawford was made, and therefore it is voluntary—without consideration; and, this being so, it is fraudulent as against the plaintiffs and others, the creditors of Foster, the grantor therein. The decided weight of the evidence supports this conclusion.

And yet it may be that these notes were existing obligations between the parties thereto on February 6, 1884, and that all the acts and declarations of the Crawfords to the contrary are falsehoods and pretenses, spoken and acted for the selfish purpose of avoiding the payment of the taxes thereon; but, if so, they have been ensnared in their own net and cannot complain that the court has taken them at their own word.

192 Some question is made by counsel for the Crawfords as to the right of the plaintiff to maintain this suit. The testimony is satisfactory, indeed there is no room for doubt about it, that Sibson, Quackenbush & Co. and Noon & Co. sold and assigned their respective judgments to the plaintiff absolutely and for a valuable consideration, $5,000 in the first case and $500 in the second, through the agent of the plaintiff's attorney-in-fact, William S. Ladd; and if Ladd & Tilton advanced him the money wherewith to make the purchase, as suggested in the argument, of which there is no proof, it would make no difference. The only question to be considered is, Did the judgment creditors sell and assign the judgments in question absolutely without any trust or reservation in their own favor? In other words, was the sale a real and not a fictitious one? As I have said, the evidence is satisfactory on this point. The sale was absolute and unqualified. This being so, it is altogether immaterial that the judgment creditors may have been induced to make this sale, as they did, because they feared they could not succeed in enforcing the judgments in the State court—the tribunal of the defendants—or that the plaintiff made the purchase because, being a citizen of Illinois, he thought he could enforce the same against the property of the judgment debtor, in the hands of the Crawfords, by a suit in this court—the interstate tribunal—and that he intended to do so when he bought them.

The motive with which a party purchases property or a claim has nothing to do with his right to maintain an action thereon or thereabout in this court any more than in a State court. McDonald *vs.* Smalley, 1 Pet., 623; Barry *vs.* Baltimore City, 6 Wall., 288; Collinson *vs.* Jackson, 8 Saw., 363. The conveyances to John A. Crawford and Ashby Pearce being valid as against the plaintiff, the bill will be dismissed as to them, with costs.

The conveyance to William Crawford, being void as against creditors, will be declared fraudulent and set aside, and the property sold by the master, and the proceeds applied, first, on the judgments of the plaintiff and his costs and disbursements in this suit, and the

remainder, if any, *pro rata* on the judgments and costs and disbursements in this suit of Walden, Baltimore, and Liles. The decree will also provide that if the proceeds of the sale are not sufficient to pay the judgments of the plaintiff and his costs and disbursements that execution may issue against the property of William Crawford for the remainder.

The judgments of the plaintiff are prior in time to those of Baltimore and Liles, but subsequent to that of Walden. Neither of the judgments, however, are liens on the property in question, the title of the judgment debtor thereto having passed to William Crawford before the judgments were given or docketed. There was no interest of Foster's left in the property for the judgments to operate on. The conveyance was valid between the parties thereto. The right of the creditors to have it set aside for fraud as to them was all that was left. The plaintiff, being the first creditor to assert this right, by the filing of his bill, then acquired a prior right to whatever may be made out of the property of the suit. Burt *vs.* Keyes, 1 Flippin, 72; Wait, F. C., § 392; *In re* Estes, 6 Saw., 459, and cases there cited.

In the latter case, after a careful examination of the subject, I held that under the law of this State the lien of a judgment only attached to property belonging to the judgment debtor at the date of its docketing, and that a conveyance, though void as to creditors who might assert their right against it, was valid between the parties and passed all the estate of the grantor in the premises to the grantee, and therefore the lien of a subsequent judgment does not attach to the property.

Mr. C. E. S. Wood and Mr. George H. Williams, for the plaintiff.

Mr. Earl C. Bronaugh and Mr. L. Flinn, for the defendants the Crawfords and Pearce.

Mr. J. K. Weatherford and Mr. Charles E. Wolverton, for the defendants Goltra, Walden, Liles, and Baltimore.

(Signed) MATTHEW P. DEADY,
U. S. District Judge, Oregon.

Endorsed: Filed Aug. 20, 1888. R. H. Lamson, clerk.

193 And afterwards, to wit, on the 31st day of August, 1888, there was duly filed in said court an affidavit of C. E. S. Wood in words and figures as follows, to wit:

194 In the Circuit Court of the United States for the District of Oregon.

CHAS. A. NEAL, Plaintiff,
vs.
J. H. FOSTER, JNO. CRAWFORD, *et al.*, Defendants.

U. S. OF AMERICA,
District of Oregon, } *ss:*

I, C. E. S. Wood, first being duly sworn, say that the defendant J. H. Foster died at Albany, Linn county, Oregon, during the pres-

ent term of this court and after this cause had been argued and submitted; that said Foster died June —, 1888, and no executor or administrator has been appointed.

C. E. S. WOOD.

Subscribed and sworn to before me this 31 Aug., 1888.

R. H. LAMSON, *Clerk*,
By R. B. LAMSON, *Deputy*.

(Endorsed:) Filed Aug. 31, 1888. R. H. Lamson, clerk.

195 And afterwards, to wit, on the 31st day of August, 1888, there was duly filed in said court a cost bill in words and figures as follows, to wit:

196 In the Circuit Court of the United States for the District of Oregon.

CHAS. A. NEAL, Plaintiff,
vs.
J. H. FOSTER, JNO. A. CRAWFORD, WM. CRAWFORD, and ASHBY PEARCE, *et al.*, Defendant-. } No. —.

Statement of disbursements claimed in the above-entitled cause, viz:

Clerk's fees		$80 40
Marshal's fees		5 24
Costs transcript from State court		27 80
Clerk's & sheriffs' fees, State court		54 40
Printing brief		52 50
Attorney's fee		20 00
Attorney's fee for taking depositions, at $2.50 each		350 00
Master's fees		
Stenographers' fees:		
Baldwin	158 13	
Richardson	51 50	
		209 63
Witness fees:		
C. H. Stewart, 9.50; T. J. Anderson, 12.00; J. Connor, 9.50; J. L. Hill, 9.50; H. H. Hewitt, 9.50; T. Monteith, 14.50; G. W. Burkhardt, 3.00; D. S. Smith, 16.50; W. C. Morgan, 10.00; J. P. Baltimore, 10.00; H. C. Powell, 11.00; F. M. Daniels, 7.00; H. S. Williams, 7.00; G. Metasce, 10.00; E. T. T. Fisher, 9.50; L. E. Gray, 9.50; G. W. Gray, 9.50; V. H. Colwell, 10.00; H. Bryant, 2.00; L. E. Gray, 8.00; John Chiswell, 9.50		197 00
W. M. Ladd, 1.50; W. S. Sibson, 1.60; —— Osborne, 1.60		4 80
Total		$1,001 77

[Endorsed:] No. 1258. In the circuit court of the United States

for the district of Oregon. Chas. A. Neal, plaintiff, *vs.* Foster, Crawford, *et al.*, defendant-. Cost bill.

Endorsed: Filed Aug. 31, 1888. R. H. Lamson, clerk, by R. B. Lamson, deputy clerk.

DISTRICT OF OREGON, *ss:*

I, C. E. S. Wood, being duly sworn, say I am one of plaintiff's attorneys in the above-entitled cause; that the costs and disbursements set forth above have been necessarily incurred in the prosecution of this suit, and that plaintiff is entitled to recover the same from the defendant William Crawford.

C. E. S. WOOD.

Subscribed and sworn to before me this 31st day of Aug., 1888.

R. H. LAMSON, *Clerk*,
By R. B. LAMSON, *Deputy Clerk.*

197 And afterwards, to wit, on the 1st day of September, 1888, there was duly filed in said court a notice of appeal of defendant William Crawford in words and figures as follows, to wit:

198 In the Circuit Court of the United States for the District of Oregon.

CHARLES A. NEAL, Complainant, *vs.* JAMES H. FOSTER, JOHN A. CRAWFORD, WILLIAM CRAWford, Ashby Pearce, John R. Baltimore, J. S. Liles, E. Walden, and W. H. Goltra, Defendants.	No. 1258.

The appeal of William Crawford, one of the above-named defendants, respectfully showeth that on the — day of ——, 188–, the above-named complainant filed his complaint in the circuit court of the State of Oregon for Linn county against the above-named defendants and against this appellant as one of said defendants, alleging that on and prior to February 6th, 1884, the defendant James H. Foster was indebted to the firm of Sibson, Church & Co. in the sum of $13,034.96, which indebtedness was, on July 15th, 1885, assigned by said firm to the firm of Sibson, Quackenbush & Co., who, on January 19th, 1886, commenced an action at law in the circuit court of Linn county, Oregon, against said Foster for the recovery thereof, and on March 8th, 1886, obtained judgment against him in said action for $14,037.87 and $8.85 costs, with interest on said aggregate sum of $14,046.72 at eight per cent. per annum, which judgment was on the same day duly entered and docketed; that on March 15th, 1886, execution was issued upon said judgment, which on March 16th, 1886, was duly returned by the sheriff *nulla bona;* that no part of said judgment has been paid and the same is a lien on Foster's property in said county; that on June 11th, 1886,

199 Sibson, Quackenbush & Co. sold and assigned said judgment to plaintiff, who is now the owner and holder thereof.

That on February 6th, 1884, said Foster was indebted to the firm

of W. C. Noon & Co. in the sum of $1,599.00, for which Foster on February 8th, 1884, executed to them his note bearing ten per cent. interest from date; that during February, 1884, said Foster purchased from said Noon & Co. merchandise of the agreed value of $845.00, on which Foster agreed to pay interest after sixty days at the rate of ten per cent. per annum; that on February, 1886, said Noon & Co. sued Foster on said demands in said circuit court of Linn county, Oregon, and on March 8th, 1886, recovered judgment against him in said action for $1,909,15 and for $11.20 costs, with interest on said aggregate sum of $1,920.35 at eight per cent. per annum, which judgment was duly docketed and became a lien on Foster's property; that on March 15th, 1886, execution was issued on said judgment, which was on the same day returned by the sheriff *nulla bona*, and no part of said judgment has been paid; that on June 19th, 1886, said Noon & Co. sold and assigned said judgment to the plaintiff, who now holds the same.

That at the time when each of said before-mentioned debts were contracted and when said judgments were rendered said Foster was the owner of the real property hereinafter described, and continued to own and hold the same until February 6th, 1884, when he conveyed or pretended to convey to said John A. Crawford certain real property and rights and interests in other real property, bounded and described as set forth in said complaint, and numbered as "parcels," from one to five, inclusive, and that said Foster also on said February 6th, 1884, conveyed to this defendant and appellant certain other real property, numbered parcel six, particularly described by metes and bounds in said compliant, and being one hun-
200 dred feet in length and seventy-four feet in width, out of lot four, in block six, in the city of Albany, in said county of Linn, and containing thereon a brick store building.

That Foster's said deeds to John A. Crawford and William Crawford were duly recorded on February 7th, 1884, in Linn county aforesaid; that on February 7th, 1884, said Foster conveyed to defendant Ashby Pearce parcel seven, being certain other real property which is described at length by metes and bounds in said complaint, and said deed was duly recorded in said county on February 8th, 1884.

That each and all of said deeds to John A. Crawford, William Crawford, and Ashby Pearce, respectively, were voluntary conveyances, made without consideration, and were made and delivered by Foster and accepted and received by said respective grantees therein named with intent to defraud, cheat, hinder, and delay Foster's creditors, and especially Sibson, Quackenbush & Co. and W. C. Noon & Co., and that said grantees respectively received said property with full knowledge of said fraudulent intent and for the purpose of secreting the same from Foster's creditors and to hinder, delay, and defraud them and in order to hold the said property in secret trust for Foster.

That Foster did not at the time of making said conveyances have, and has not since had, and has not now, any other property than that so fraudulently conveyed away by him as aforesaid, and his

creditors are unable to collect his said indebtedness to them; that the property so conveyed away by Foster was at that time worth $110,000.00 and is now worth more, and that Foster is still in the possession and enjoyment of the whole of said property; that on March 10th, 1884, said John R. Baltimore recovered judgment
201 against said Foster in said circuit court of Linn county, Oregon, for the sum of $1,628.47 and $24.45 costs; that on February 25th, 1886, said W. H. Goltra recovered judgment in the same court against said Foster for $1,617.70 and $19.20 costs; that on Mach 12th, 1886, said J. S. Liles recovered judgment in the same court against Foster for the sum of $1,059.80 and $9.95 costs.

That on February 23rd, 1886, said E. Walden recovered judgment in the same court against Foster for $551.00 and $17.30 costs, and executions were regularly issued on said judgments recovered by Baltimore and Goltra and returned *nulla bona*; that plaintiff has exhausted his remedy at law and is without redress, unless said conveyances be set aside. Wherefore the prayer of said complaint was and is in substance to the effect that the court decree that each and all of said conveyances by Foster to John A. Crawford, William Crawford, and Ashby Pearce respectively be set aside, canceled, and annulled as having been made with intent to hinder, delay, and defraud Foster's creditors—plaintiff and others; that Foster's assets be marshalled and the priorities among said creditors fixed and determined, and that Foster's property be sold and said judgments satisfied out of the proceeds of such sale, and the balance, if any, be disposed of as equity may demand, and for such other and further relief in the premises as may be equitable and that plaintiff recover his costs and disbursements.

That afterward, on or about the 21st day of July, 1886, said cause was, on application of plaintiff, removed from said State court into the United States circuit court for the district of Oregon; that afterwards, on or about August 22nd, 1886, said defendants, James H. Foster, John A. Crawford, William Crawford, and Ashby Pearce, filed their joint answer under oath to said complaint in and
202 by which answer they admit the recovery of the said several judgments against Foster in the complaint alleged at the times and by the parties and in the several amounts in the complaint stated, but deny that plaintiff is the owner of any of said judgments and allege that the judgments claimed to be owned by him were assigned to him without his knowledge or assent and without consideration for the sole purpose of collusively conferring jurisdiction of this cause upon the United States court; admit that executions have been issued upon said judgments and returned *nulla bona*, and that said Foster has no property subject to execution out of which any part of the money represented by any of said judgments can be recovered; admit that on February 6th, 1884, Foster conveyed said parcels of real property numbered from one to five, inclusive, to John A. Crawford, and that on February 7th, 1886, Foster conveyed parcel 7 to Ashby Pearce, but deny that either of said conveyances was voluntary or without full consideration or was made, executed, or delivered by Foster or accepted or received by

either of said grantees, John A. Crawford, William Crawford, or Ashby Pearce, with any intent or purpose to hinder or delay or defraud or cheat the creditors or any creditor of said Foster or any other person or were especially or at all intended to hinder, delay, or defraud Sibson, Quackenbush & Co. or W. C. Noon & Co. or any one else, but that the truth is that said Foster on February 6th, 1884, was deficient and short about 20,000 bushels of wheat which he had received on storage and given warehouse receipts for and which he had not purchased and had not the wheat to restore nor money to pay for; that on February 6th, 1884, said Foster and John A. Crawford entered into a contract whereby Foster sold and conveyed to said John A. Crawford the said parcels of real property numbered from one to six, inclusive, described in the complaint and agreed to
203 assign and deliver to him all of the book accounts due and owing to Foster in his mill and warehouse business and water works at Albany, which accounts were of the value of about $3,000.00, and agreed to sell and deliver to him, the said John A. Crawford, all the grain sacks owned by Foster in his said mill and warehouse business, of the value of about $3,000.00, in consideration whereof said John A. Crawford agreed to pay Foster about $64,000.00 and to furnish about 20,000 bushels of wheat to the persons holding Foster's said warehouse receipts therefor and to assume Foster's liabilities in regard thereto, estimated at about 20,000 bushels.

That about said $64,000.00 was to be paid by said John A. Crawford to Foster by said Crawford paying $15,000.00 of Foster's indebtedness on notes to third persons mentioned in said answer and by the surrender by said Crawford to said Foster of six promissory notes executed by said Foster to this defendant, William Crawford, dated July 20th, 1883, and then owned and held by this defendant, William Crawford, and upon which there was due about $16,433.00, and by the surrender to him, Foster, of three other of his promissory notes given and due and owing by said Foster to said John A. Crawford for about $26,520.00, and by the surrender by John A. Crawford to said Foster of about $5,800.00 then due and owing by Foster to said John A. Crawford on account, and that in pursuance of said agreement said Foster conveyed said tracts or parcels of real property numbered from one to five, inclusive, to said John A. Crawford and at his request conveyed said tract or parcel to this defendant, William Crawford, and assigned and transferred to said John A. Crawford said grain sacks and book accounts, and said John A. Crawford then and there assumed Foster's liability for said shortage in wheat upon said wheat receipts and paid off the same and canceled and surrendered to said Foster his said six promissory
204 notes for $16,433.00, due and owing to this defendant, William Crawford, and the three promissory notes for $26,520.00, due and owing by Foster to John A. Crawford, and the open account for $5,800.00, then due and owing from said Foster to said John A. Crawford, and paid said $15,900.00, owing by said Foster on his promissory notes to third persons mentioned in said answer.

That the amount so paid by said John A. Crawford to said Foster for said property was more than the same was reasonably worth,

and said conveyances were therefore made in good faith and for a full and adequate consideration and without any intention of hindering, delaying, or defrauding any creditor of Foster.

That prior to February 7th, 1884, defendant Ashby Pearce borrowed of the First National Bank of Albany, Oregon, for Foster's use and benefit, $5,000.00, and Foster took said money and signed as security a note therefor, executed by said Pearce to said bank; that on February 7th, 1884, said note was due and unpaid, and that on that date Foster conveyed parcel seven, subject to his wife's dower, to said Pearce for $4,000.00, and Pearce thereupon paid $4,000.00 of the amount due on said note, which was more than the value of said property conveyed to him by Foster, and said conveyance was in good faith and for full value.

And the answer also alleges that Foster at that time owned some other property specified, but admits that he then was and still is insolvent; and said answer denies that either of said conveyances of property by Foster to John A. Crawford, William Crawford, or Ashby Pearce was made by him or received by either of them with any knowledge or belief or in contemplation that such conveyance would hinder or delay any creditor of Foster or any one else from the collection of any debt or demand or that any of said property is held in trust for Foster.

205 Denies that the property described in the complaint as being owned by Foster on February 6th, 1884, was then worth $110,000.00 or more than $56,000.00, or is now worth more than the latter sum.

Admits that the Crawfords and Pearce still hold the property so conveyed to them respectively by Foster, and deny that Foster is in possession of any part thereof except tract or parcel three, on which is a dwelling-house occupied by Foster as tenant of J. A. Crawford.

By reply in said suit issue was, on or about September 13th, 1886, joined to said answer, and thereupon, on or about October 7th, 1886, said cause was referred by the court to the master to take and report the evidence and proofs and report his findings of fact and conclusions of law from said evidence, which report of the master was returned and filed in said court on or about October 10th, 1887, in substance and effect sustaining said conveyances by Foster to John A. Crawford and Ashby Pearce as having been made in good faith and for full value, but finding that as to the said conveyance made by said Foster to this defendant, William Crawford, that the same was fraudulent as to Foster's creditors and without consideration, and that the six notes of Foster to this defendant which were surrendered up by said John A. Crawford to said Foster as the consideration of the conveyance of said parcel seven of real property by said Foster to this defendant on February 6th, 1884, had been previously and otherwise paid and had then no actual existence, and that said conveyance by said Foster to this defendant should be canceled and the property therein described sold and the proceeds of

sale applied to the payment of said judgments in the complaint described.

That thereupon, on October 10th, 1887, this defendant, William Crawford, filed his exceptions and motion in said court to set aside said findings and conclusion of said master in so far as this
206 defendant is concerned, and asking that the deed so executed by said Foster to this defendant for said parcel of real property called parcel seven in the complaint and in said master's report, and in both particularly described by metes and bounds, be decreed to have been made and executed by said Foster and accepted and received by this defendant in good faith and for value, and that said complaint be dismissed by the court at plaintiff's costs; which motion being heard by the court was denied and on August 20th, 1888, the said court did make and enter its final decree in this cause, wherein and whereby it was in substance adjudged and decreed among other things that said conveyance so executed by said Foster on February 6th, 1884, to this appellant was and is fraudulent and void and was executed and delivered by said Foster and accepted and received by this defendant, William Crawford, without consideration and with intent to hinder, delay, and defraud the creditors of said Foster, and that said deed be canceled and said property sold and said notes be paid out of the proceeds of such sale.

Wherefore this appellant appeals from the whole of said final decree in so far as the same effects or denies or is adverse to the validity and good faith of said conveyance of property by said James H. Foster to this defendant; and this defendant appeals from so much of said decree as denies the validity, value, and sufficiency of said promissory notes surrendered up by this defendant to said Foster as the consideration of said conveyance, and appeals from all that portion of said decree whereby it is adjudged that said conveyance executed by said Foster to this appellant on February 6th, 1884, was executed and delivered by said Foster and accepted and received by appellant in fraud of the rights of Foster's creditors, and that said conveyance be set aside and the property therein described sold and the proceeds of such sale paid over to plaintiff and Foster's other creditors represented in this suit, and that appellant pay any
207 costs of this suit; and appellant respectfully prays that the said final decree of said circuit court and the complaint or bill, answer, pleadings, depositions, evidence, and proceedings in said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court and every part thereof may be reversed, so far as the validity and sufficiency of said conveyance to this defendant and of the consideration therefor is impeached or denied thereby, and that said conveyance may be decreed to have been executed and delivered by said James H. Foster and accepted and received by this appellant in good faith and for full value, and that said complaint or bill be

dismissed as to appellant, with costs, or such other decree as to said Supreme Court may seem just.

Dated August 31, A. D. 1888.

J. W. WHALLEY,
Attorney of Supreme Court and Solicitor for Appellant.
E. C. BRONAUGH,
H. H. NORTHUP AND
L. FLINN,
Sol. for Appellant.

Endorsed: Filed Sept. 1, 1888. R. H. Lamson, clerk, by R. B. Lamson, deputy.

208 And afterwards, to wit, on the 4th day of September, 1888, there was duly filed in said court a bond of defendant Wm. Crawford on appeal, in words and figures as follows, to wit:

209 In the Circuit Court of the United States for the District of Oregon.

CHARLES A. NEAL, Complainant,
vs.
J. H. FOSTER, JOHN A. CRAWFORD, WM. CRAWFORD, ASHBY PEARCE, *et al.*, Defendants.

Know all men by these presents that we, John A. Crawford, John McCraken, Nelson H. Allen, and David P. Thompson, are held and firmly bound unto Charles A. Neal in the sum of fifteen thousand dollars, to be paid to the said Charles A. Neal, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated September 4th, 1888.

Whereas the above-named William Crawford, defendant in the above-entitled suit, has appealed to the Supreme Court of the United States to reverse the decree in the above-entitled cause by the circuit court of the United States for the district of Oregon:

Now, therefore, the condition of this obligation is such that if the above-named William Crawford shall prosecute said appeal to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

JOHN A. CRAWFORD. [L. S.]
JOHN McCRAKEN. [L. S.]
NELSON H. ALLEN. [L. S.]
DAVID P. THOMPSON. [L. S.]

Signed, sealed, and delivered in presence of—

——.

UNITED STATES OF AMERICA, } ss:
District of Oregon, }

I, —— ——, being duly sworn, depose and say that I am one of the sureties in the foregoing bond; that I am a resident and — holder within said district, and that I am worth, in property situated therein, the sum of —— dollars over and above all my just debts and liabilities, exclusive of property exempt from execution.

—— ——.

Subscribed and sworn to before me this —— —, 188–.

—— .——.

Approved —— —, 188–.

[Endorsed:] No. 1258. U. S. circuit court, district of Oregon. Chas. A. Neal *vs.* James H. Foster *et al.* Bond.
(Endorsed:) Filed Sept. 4, 1888. R. H. Lamson, clerk, by R. B. Lamson, deputy clerk. Approved. Matthew P. Deady, U. S. district judge.

UNITED STATES OF AMERICA, } ss:
District of Oregon, }

I, —— ——, deing duly sworn, depose and say that I am one of the sureties in the foregoing bond; that I am a resident and — holder within said district, and that I am worth, in property situated therein, the sum of —— dollars over and above all my just debts and liabilities, exclusive of property exempt from execution.

—— ——.

Subscribed and sworn to before me this —— —, 188–.

Approved —— —, 188–.

210 And afterwards, to wit, on the 5th day of September, 1888, there was duly filed in said court a bond of plaintiff on appeal in words and figures as follows, to wit:

211 In the Circuit Court of the United States for the District of Oregon.

CHAS. A. NEAL, Plaintiff,
vs.
JAS. H. FOSTER, JNO. CRAWFORD, WM. CRAWFORD, ASHBY PEARCE, *et al.*, Defendants.

Know all men by these presents that we, Chas. A. Neal and William S. Ladd and N. C. Strong, are held and firmly bound unto the clerk of the circuit court of the United States for the district of Oregon, for the benefit of whom it may concern, in the sum of one thousand dollars, to be paid to the said clerk of the said court, his legal deputy or representative, for the benefit and use of said defendants or either of them, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and

each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated Sept. 6, 1888.

Whereas the above-named Chas. A. Neal has appealed to the Supreme Court of the United States to reverse the decree in the above-entitled cause by the circuit court of the United States for the district of Oregon:

Now, therefore, the condition of this obligation is such that if the above-named Chas. A. Neal shall prosecute said appeal to effect and answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

CHAS. A. NEAL, [L. S.]
By WM. M. LADD, [L. S.]
His Att'y-in-Fact.
W. S. LADD. [L. S.]
N. C. STRONG. [L. S.]

Signed, sealed, and delivered in presence of—

———.

UNITED STATES OF AMERICA, } ss:
District of Oregon, }

I, Wm. S. Ladd, being duly sworn, depose and say that I am one of the sureties in the foregoing bond; that I am a resident and freeholder within said district, and that I am worth in property situated therein the sum of one thousand dollars over and above all my just debts and liabilities, exclusive of property exempt from execution.

W. S. LADD.

Subscribed and sworn to before me this 5th day of September, 1888.

[SEAL.] J. C. FLANDERS,
Notary Public for Oregon.

[Endorsed:] No. 1258. U. S. circuit court, district of Oregon. Chas. A. Neal, plaintiff, *vs.* James H. Foster, John Crawford, Wm. Crawford, Ashby Pearce, *et al.*, defendants. Bond.

Endorsed: Filed Sept. 5, 1888. R. H. Lamson, clerk, by R. B. Lamson, deputy clerk. Approved. Matthew P. Deady, U. S. district judge.

UNITED STATES OF AMERICA, } ss:
District of Oregon, }

I, N. C. Strong, being duly sworn, depose and say that I am one of the sureties in the foregoing bond; that I am a resident and householder within said district, and that I am worth in property situated therein the sum of one thousand dollars over and above all my just debts and liabilities, exclusive of property exempt from execution.

N. C. STRONG.

Subscribed and sworn to before me this 5th day of September, 1888.

[SEAL.] J. C. FLANDERS,
Notary Public for Oregon.

212 In the Circuit Court of the United States for the District of Oregon. In Equity.

CHARLES A. NEAL, Complainant,
v.
JAMES H. FOSTER, JOHN A. CRAWFORD, WILLIAM Crawford, Ashby Pearce, John R. Baltimore, J. S. Liles, E. Walden, and W. H. Goltra, Defendants. } No. 1258.

Notice of Appeal.

The appeal of Charles A. Neal, the above-named complainant, respectfully shows to the court as follows:

Heretofore, to wit, on July 1st, 1886, complainant filed his complaint in the circuit court of the State of Oregon for Linn county against the above-named defendants, substantially alleging as follows:

That on and prior to February 6, 1884, the defendant James H. Foster was indebted to the firm of Sibson, Church & Co. in the sum of $13,034.96, which indebtedness was on July 15, 1885, assigned to the firm of Sibson, Quackenbush & Co., who reduced the same to judgment duly rendered, entered, and docketed by and in a court of competent jurisdiction, to wit, the circuit court of the State of Oregon for Linn county, Oregon, on, to wit, March 8, 1886, said judgment and costs amounting to the sum of $14,046.72, with interest thereon at eight per cent. per annum from said March 8, 1886; that on March 15, 1886, execution was duly issued
213 upon said judgment, which execution was thereafter duly returned by the sheriff of said Linn county *nulla bona;* that no part of said judgment has ever been paid and that the same is a just claim against the said James H. Foster and a lien upon any of his property to be found in said county of Linn; that on June 11, 1886, the said Sibson, Quackenbush & Co. sold said judgment to this complainant, who ever since has been the owner and holder thereof; that on February 6, 1884, the said defendant Foster was indebted to the firm of W. C. Noon & Co. in the sum of $1,599.00, for which the said Foster on February 8, 1884, executed to said W. C. Noon & Co. his note bearing interest at ten per cent. per annum from said date, and that thereafter during February, 1884, the said Foster became indebted to said W. C. Noon & Co. for merchandise purchased from them in the sum of $845.00, on which sum the said Foster agreed to pay interest after sixty days at the rate of ten per cent. per annum; that said W. C. Noon & Co. on March 8, 1886, reduced their said claims against the said Foster to a judgment duly rendered, entered, and docketed by and in a court of competent jurisdiction, to wit, the circuit court of the State of Oregon for Linn County, Oregon, on, to wit, said March 8, 1886, said judgment

and costs amounting in the aggregate to the sum of $1,920.35, with interest thereon at eight per cent. per annum from said March 8, 1886; that on March 15, 1886, execution was duly issued upon said judgment in favor of said W. C. Noon & Co., which execution was thereafter duly returned by the sheriff of said Linn county
214 *nulla bona*; that no part of said judgment in favor of said W. C. Noon & Co. has ever been paid, and that the same is a just claim against the said James H. Foster and a lien upon any of his property to be found in said Linn county; that on June 19, 1886, said W. C. Noon & Co. sold said judgment to this complainant, who ever since has been and now is the owner and holder thereof.

That at the time each of said debts was contracted and up to February 6, 1884, the said James H. Foster was the owner of the real property described and set forth in said complaint and numbered therein as parcels 1, 2, 3, 4, 5, 6, and 7, the title to which stood in his name, but that on said February 6, 1884, the said Foster, by his certain deed or instrument of conveyance, conveyed to the defendant John A. Crawford said property described in said complaint and numbered as parcels 1, 2, 3, 4, and 5, and upon the same date, by his certain other deed or instrument of conveyance, also conveyed the property described in said complaint and numbered as parcel 6 to the defendant William Crawford, and that these said deeds to the defendants John A. and William Crawford respectively were recorded on February 7, 1884, in the records of said Linn county, Oregon; that on February 7, 1884, the said Foster, by his certain other deed or instrument of conveyance, conveyed to the defendant Ashby Pearce the property described in said complaint and numbered as parcel 7, and that said last-mentioned deed was also duly recorded on February 8, 1884, in the records of said Linn county, Oregon; that each and all of
215 the said deeds to the defendants John A. Crawford, William Crawford, and Ashby Pearce respectively were voluntary conveyances, without consideration, and were made and delivered by the said Foster and received by the respective grantees therein with the intent to hinder, delay, and defraud the creditors of said Foster; that said Foster did not, at the time of making said conveyances, have, and never since has had, any other property than that so fraudulently conveyed as aforesaid, and that his creditors are unable, by any process of law, to collect their said indebtedness from him; that the property so conveyed by the said Foster was at that time worth the sum of $110,000; that complainant has no complete, speedy, or adequate remedy at law and is without redress unless said conveyances be set aside. Wherefore said complainant prays in said complaint that the court decree that each and all of said conveyances by the defendant James H. Foster to the defendants John A. Crawford, William Crawford, and Ashby Pearce respectively be declared null and void and set aside, and that the priorities among said creditors be fixed and determined, and that said property be sold and said judgments satisfied out of the proceeds of such sale, and that the balance, if any, be disposed of as equity may demand, and for such other and further relief in the

premises as may be equitable, and that the complainant recover his costs and disbursements.

Afterwards, to wit, on July 21, 1886, said cause was, on the application of this complainant, removed from said circuit court
216 of the State of Oregon for Linn county to the circuit court of the United States for the district of Oregon; and afterwards, to wit, on August 22, 1886, the said defendants, James H. Foster, John A. Crawford, William Crawford, and Ashby Pearce, filed their joint answer to said complaint, in which they admit the recovery of said several judgments against the said Foster, as in the complaint alleged, but deny that this complainant is the owner of the same, and allege that said assignments to him were made collusively for the purpose of obtaining the jurisdiction of the said circuit court of the United States for the district of Oregon, and admit that executions have been issued upon said judgments and returned *nulla bona*, and that Foster has no property now subject to execution or out of which any part of said money can be made by any process of law, and admit that said Foster conveyed said parcels of property, as in the complaint alleged, but deny that either or any of said conveyances was voluntary or in any way fraudulent or without full consideration or made with any intent to hinder or delay the creditors of said Foster or any other person; and said answer further alleges as follows:

That on February 6, 1884, said Foster was short about 20,000 bushels of wheat, which he had received on storage and had used and was without money to pay for, and that on said date said Foster and said John A. Crawford entered into a contract whereby the said Foster sold and conveyed to said John A. Crawford the real property in said complaint named as parcels 1 to 6, inclusive, and certain personal property in the way of book accounts and grain sacks, as in the said answer alleged, in consideration of which the said John A. Crawford agreed to pay the said Foster about
217 $64,000 and to pay for said shortage of wheat, to wit, about 20,000 bushels; that said $64,000 was to be paid by said Crawford paying about $15,000 of Foster's indebtedness to third persons on notes given by said Foster and Crawford to said persons, and by the surrender by said John A. Crawford to said Foster of six promissory notes executed by said Foster to the defendant William Crawford and dated July 20, 1883, and then owned and held by the defendant William Crawford, and upon which there was due about $16,433, and by the surrender to said Foster of three other promissory notes given by said Foster to said John A. Crawford for about $26,520, and by the surrender by said John A. Crawford to said Foster of an account due to said Crawford from said Foster amounting to about $5,800; that thereupon, in pursuance of said agreement and in consideration of the transfer of said credits and the payment of said moneys, said real property described in said complaint and numbered as parcels 1 to 5, inclusive, was conveyed by said Foster to said John A. Crawford, and the property described in said complaint and numbered as parcel 6 was also conveyed by said Foster to the defendant William Crawford; that the amount

thus paid by the said John A. Crawford to said Foster for said property was more than the same was reasonably worth, and said answer denies that said property is worth $110,000 or any more than $56,000, and admits that the said John A. and William Crawford still hold the property so conveyed to them respectively by the defendant Foster, but denies that said Foster is in the possession or enjoyment of any part thereof except the tract or parcel numbered 3, which is a dwelling-house occupied by the said Foster as a tenant of the said John A. Crawford.

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Issue was joined in this suit on or about September 13, 1886, by the reply of this complainant filed to said answer; and thereupon, to wit, on October 7, 1886, said cause was referred by the court to its master in chancery to take and report the evidence and the proofs, with his findings of fact and conclusions of law thereon, which report of said master was returned and filed in said court on or about October 10, 1887, substantially finding and concluding as follows:

That the conveyances aforesaid by the defendant Foster to the defendants John A. Crawford and Ashby Pearce respectively were made in good faith and for value, but that the said conveyance by said Foster to the defendant William Crawford was made without consideration and with intent to hinder, delay, and defraud the creditors of the said Foster and was fraudulent as to said creditors; that the said six notes of the defendant Foster, made to the defendant William Crawford, which were given up by the defendant John A. Crawford as the consideration for the conveyance of said parcel six, as in the complaint described, had been previously fully paid and had no actual existence, and that said conveyance of said parcel six should be canceled and the property therein described sold and the proceeds applied to the payment of the judgments now owned and held by this complainant as aforesaid.

That thereafter, to wit, on November 3, 1887, this complainant filed his exceptions to said report and moved the court to set aside the said findings and conclusions of said master in so far as the conveyances by said Foster to said John A. Crawford and Ashby Pearce respectively were sustained and found to be upon consideration and in good faith; which exceptions and motion were by the court duly heard and considered thereafter, to wit, on April 16, 1888; and thereafter, to wit, on August 20, 1888, the said court duly pronounced its decision thereon; and thereafter, to wit, on August 31, 1888, final decree in this cause in accordance with the said decision was duly filed, wherein and whereby it was in substance adjudged and decreed, among other things, that the said conveyances made to the said John A. Crawford and Ashby Pearce respectively by the said defendant Foster were upon consideration and without intent to hinder, delay, or defraud the creditors of the said Foster, and that the bill or complaint herein be dismissed as to said defendants John A. Crawford and Ashby Pearce, and that they have and recover from this complainant their costs and disbursements in this behalf expended.

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Wherefore this complainant appeals from the whole of said final decree so far as the same sustains the validity and good faith of the said conveyances by the said James H. Foster to the defendants John A. Crawford and Ashby Pearce respectively and so far as the relief prayed for in the complaint against the said John A. Crawford and Ashby Pearce is denied by said decree.

And this appellant respectfully shows that heretofore and during this present term of said circuit court of the United States for
220 the district of Oregon, to wit, on August 31, 1888, he made application in open court to said court for the allowance of this appeal and for the fixing of bond as security for costs and damages on appeal, and the same was allowed.

And appellant respectfully prays that the said final decree of said circuit court of the United States for the district of Oregon, with the complaint or bill, the answer, the reply, and all pleadings, depositions, and testimony, and a complete record of all the proceedings in said cause, be sent without delay to the Supreme Court of the United States; and that citation may issue to the defendants as required by law; and that the said Supreme Court may proceed to hear the said cause anew; and that the said decree of the said circuit court of the United States for the district of Oregon may be reversed, so far as the validity and sufficiency of the conveyances respectively made to the said John A. Crawford and Ashby Pearce as aforesaid is sustained and the consideration therefor upheld and the declaring the same fraudulent and void as made with intent to hinder, delay, and defraud the creditors of said Foster denied, and in so far as the relief prayed for by this complainant against the said John A. Crawford and Ashby Pearce is denied; and that the said conveyances to said John A. Crawford and Ashby Pearce respectively may be decreed to have been executed and delivered by the said James H. Foster and received by the defendants John A. Crawford and Ashby Pearce respectively with intent to hinder, delay, and defraud the creditors of said Foster and without consideration; and that said conveyances be set aside and the property thereby conveyed sold to satisfy the claims of this complainant, as in the bill or complaint set forth, and for the costs and dis-
221 bursements by complainant in this behalf sustained, and for such other and further relief as to the said Supreme Court may seem equitable and just.

Dated at Portland, Oregon, this September 5, 1888.

GEO. H. WILLIAMS,
C. E. S. WOOD,
Solicitors for Appellant.

Due service of the within notice of appeal by certified copy, as provided by law, is hereby admitted at Portland, Or., September 6, 1888.

WHALLEY, BRONAUGH & NORTHUP,
Attorneys for Defendants James H. Foster, John A. Crawford, Wm. Crawford, & Ashby Pearce.

Endorsed: Filed Sept. 6, 1888. R. H. Lamson, clerk, by R. B. Lamson, deputy.

222 In the United States Circuit Court for the District of Oregon.

CHARLES A. NEAL, Complainant,
vs.
JAMES H. FOSTER, JOHN A. CRAWFORD, and Others, Defendants. } Equity. No. 1258.

Testimony.

GEORGE H. DURHAM, *Master.*

223 In the Circuit Court of the United States for the District of Oregon.

CHARLES A. NEAL, Plaintiff,
vs.
JAMES H. FOSTER, JOHN A. CRAWFORD, William Crawford, Ashby Pearce, John R. Baltimore, J. S. Liles, E. Walden, and W. H. Goltra, Defendants. } Testimony. No. 1258.

PORTLAND, *District of Oregon,* } *ss:*

On this 4th day of November, 1886, at eleven o'clock a. m., at my office, in Portland, in said district, the above-entitled cause came on for the purpose of taking testimony, due notice having been given the parties hereto, at which time the complainant appeared by Mr. C. E. S. Woods, one of his solicitors, and Mr. E. C. Bronaugh appearing for defendants James H. Foster, John A. Crawford, and William Crawford and Ashby Pearce.

Whereupon the following proceedings were had, to wit:

GEORGE H. DURHAM, *Master.*

November 4, 1886.

224 *J. H. Foster, Direct.*

JAMES H. FOSTER, being called as a witness on the part of complainant and being duly sworn, testifies:

My name is James H. Foster; residence, Albany, Oregon; age, 63 years; occupation, not engaged in anything particular; have been attending to business for Mr. Crawford; that's my chief business now. I have lived in Albany since 1852. I was first engaged in mercantile business in Albany; kept a store from 1852 to about 1865. I think it was in 1867 that I bought the Magnolia mills from Wm. Crawford; I think it was.

He was the party that made the deed to me and my brother.

I don't know anything about any one else having an interest in that mill at the time we bought. The Magnolia mill property consisted of a strip of land, the mill building and machinery in it,

and a portion of the water power of the Calapooia. The water used at the mill from the Calapooia is taken directly out of the dam; flows out of the dam into the fore-bay, in which the whole sets. This dam was part of the mill property.

225 The price paid for this property was $16,000, to the best of my recollection, or the price that was to be paid. My brother and me purchased the mill property together, paying for it, I think, $16,000. We gave a mortgage on the mill and a brick house for $10,000 of the purchase price. My brother and I had equal interests in the property. I purchased his interest from him, I think, in 1876. It will be difficult for me to describe all that transaction. There were a good many debts against the firm and I assumed them, let him have some other real estate, paid some money, and other things which I don't think I can now describe. Don't recollect the amount of money I paid him nor about how much. I mean that I don't clearly remember the things I have said; it would be difficult for me now to describe. I have no recollection now whether he took any notes or not. It appears to me he may have done so; I am not positive.

Q. At the time you and your brother made this deal, what did you consider his half interest to be worth?

A. I have no recollection of a definite sum being named as the value of the half interest, but, as I before stated, there was a large indebtedness against the firm, and he proposed that if I would take the responsibility of that indebtedness and relieve him from it and give him a warehouse that stood on the bank of the river and, I think, a brick building in Albany and pay him a small

226 amount of money—I don't remember the amount now, but know it wasn't very large—and probably there were some other considerations not very important, he would deed me his interest in the mill, and I accepted his proposition. The brick house was property held between us before equally, and I only gave him my interest in that. This was not the same brick house that the mortgage was on. The mortgage was on a two-story brick, and this one I traded my brother was a one-story building.

From that time on I was sole proprietor of the Magnolia mills. I suppose I was in other business outsides of the milling business. I was not in any store or mercantile business, but I was engaged in warehouse business—storing wheat. I bought wheat and made it into flour mostly; did buy and sell a small amount of wheat. I was also interested in water works in Albany. I took an interest in the water works with John A. Crawford. I was to have had a half interest in them. I suppose if I had paid money equal to him I would have had.

(Mr. Bronaugh objects to all testimony concerning water works as irrelevant and immaterial.)

There were books kept that I suppose ought to have shown the transactions in these things.

Q. Who had charge of the books of the milling business from the time you and your brother went in together and of the other

business from the time you bought your brother out up to the time you transferred to Mr. Crawford?

227 Ans. For a good many years after we first started in business we had no regular book-keeper. Sometimes Frank Panton, our miller, attended to them; sometimes I attended to them; probably my brother, sometimes. The books were not kept on a regular system. I think my son Robert attended to the books awhile after I bought my brother out; then I think my daughter, now Mrs. Powell, attended to them some years, then my son Robert took them again. I turned these books over to John A. Crawford at the time I sold to him.

Recess until 1.30 p. m.
Parties met after recess, at 1.30 p. m.

Examination of witness FOSTER resumed:

The books of the warehouse were part of the milling business; the books of the water works, what books were kept respecting them, were kept, I think, by Maggie Powell and Robert A. Foster.

(All the foregoing objected to by Mr. Bronaugh as irrelevant and immaterial.)

I think some of the proceedings relative to the water works were carried into the mill books; can't say when that was done. Mr. Crawford has that book.

(Same objection.)

228 It would be difficult for me to state what transactions I had with Sibson, Church & Co. for the year prior to my transfer to Mr. Crawford. The books and papers will tell what they were.

(Objected to as immaterial, as the matters have been reduced to judgment.)

Q. State what business transactions you had with Mr. John A. Crawford during the year 1883. State generally.

A. There was quite an amount of transactions, and they are on the books. I can't remember them in detail. Mr. Crawford has the books.

J. H. FOSTER.

By consent of parties, adjourned here until Tuesday, November 9, 1886, at 10 o'clock a. m.

GEO. H. DURHAM, *Master.*

TUESDAY, *November 9th*, 1886, at 10 o'clock a. m.

Parties met pursuant to adjournment.

Messrs. J. K. Weatherford and C. E. Wolverton appearing, with Wm. Woods, for the complainant; Mr. Bronaugh, for the def'ts.

Stipulation for Stenographer.

The further examination of the witness Foster is, by consent of parties, postponed, and other witnesses are produced. It is agreed

by the respective counsel that J. R. Baldwin shall report the testimony of the parties stenographically; that the witnesses may sign the reporter's notes of their testimony, and that such signatures shall have the same force as if the respective long-hand depositions
229 had been signed by them; and that the expenses of the stenographic report shall abide the result of the case, and be taxed as disbursements in favor of the winning party.

Mr. Baldwin was thereupon by me duly sworn as official reporter herein, whereupon the examinations of witnesses for the complainant was proceeded with.

The foregoing record was read over to counsel by me, and was agreed to by them.

GEORGE H. DURHAM, *Master.*

230 *C. H. Stewart.*

C. H. STEWART called and sworn on behalf of plaintiff.

Questioned by WEATHERFORD, attorney:

State your name, residence, age, and occupation.

A. My name is C. H. Stewart; Albany, Linn county, Oregon; age, 34; occupation, hardware merchant.

Q. What official position, if any, did you hold in the year 1883?

A. I was county clerk, Linn county, Oregon.

Q. As such officer, did you have any business with John A. Crawford or William Crawford with reference to the cancellation of a mortgage held by William Crawford against James H. Foster? And, if so, please state what it was.

A. That was the year when the mortgage tax law went into effect, and in making up the abstract of the mortgages I found one in favor of William Crawford. I think it was against Mr. Foster, for something like twenty or twenty-five thousand dollars, with interest; and before reporting it to the assessor I sent a postal card to Mr. Crawford telling him that I had found this mortgage, and for him to call and either make credits, if there were any, or cancel it before I had to make my final report to the assessor.

Q. Did he call; and, if so, what conversation occurred with reference to it, and what took place?

(Objection by Bronaugh, attorney for defendants, as immaterial.)

A. He called and cancelled the mortgage. I do not remember the exact conversation, but the purport was that it had been paid off several years before, and that he had no knowledge of it being upon the books of record.

Q. John Crawford, was it?

A. It was William.

231 Q. Did you have a conversation with John A. Crawford with reference to this mortgage; if so, what did he say concerning the same having been paid?

(Objection same as above.)

A. I do not remember ever having had a conversation with John A. Crawford in relation to it.

Q. Did you have a conversation with John A. Crawford at or about the time certain deeds were put on file deeding the mill and other property from James H. Foster to John A. Crawford in reference to this transaction?

(Objection same as above.)

A. I do not remember that it was exactly in reference to this transaction. When Mr. Crawford filed these deeds he seemed to be a very great deal surprised over the failure of Foster, and spoke about having endorsed for him a great deal, and he had spoken of the original notes that were given for the purchase price of the mill, and I guess it was this mortgage that was to secure those notes.

Q. What, if anything, did he say in that conversation about those notes which had been secured by the mortgage which William Crawford had cancelled before you being a part of the consideration for the mill and other property?

(Objection same as above by Bronaugh for defendants.)

A. Well, he mentioned the fact that some of the notes given as the original purchase price of the mill had turned up within the last few days unpaid; that he had sold them many years ago and endorsed them, and had supposed that they had been paid, and a long time before.

Q. Did he state to whom he had sold them or endorsed them?

A. I do not remember now whether he gave the names of
232 the parties to whom he had sold them or not, but he mentioned the fact that they were held in Portland. If he gave any name, I have forgotten.

Q. Did you have any other conversation with either of the Crawfords with reference to the purchase of the property from J. H. Foster?

A. No; I believe not. I had one conversation with William Crawford when he cancelled the mortgage and one with John A. Crawford when those deeds were filed.

Q. Do you remember the date of the conversation with John A. Crawford?

A. No; I could not give the date of the conversation. It was at the time all the deeds transferring the property from Foster to Crawford was filed—no; a few days prior to it; probably three or four days prior to the filing of those deeds.

Q. Where did the conversation occur?

A. It occur-ed in the clerk's office, Albany, Oregon.

Cross-examination:

Questions by BRONAUGH, for defendants:

Q. Do you recollect the date of that mortgage?

A. No; I do not. It was quite a number of years before.

Q. You say it was in favor of William Crawford?

A. Yes.
Q. Who by?
A. J. H. Foster.
Q. Upon what property was it given?
A. Upon the mill property—Magnolia mills, in Albany, Oregon.
Q. But the exact amount you do not recollect?
A. No; I do not remember.
Q. Twenty or twenty-five thousand?
A. Well, when I said twenty or twenty-five thousand the law made it the duty of the county clerks to assess up the mortgages against the holders of them at their present value, and there
233 had been no credits made on this. I took the principal and added all the accrued interest, and it amounted to somewhere between twenty and twenty-two thousand. It seems to me now that the original amount was only ten thousand, if I am not mistaken.
Q. You say William Crawford cancelled the mortgage?
A. Yes, sir.
Q. The talk you had with John A. Crawford about the time the deeds were filed or before, did he say how old those notes were that had turned up—that he supposed were paid?
A. He mentioned the fact of quite a number of notes having turned up and, among them, some that were quite old, including those given for the original purchase price of the mill by Foster to William Crawford.
Q. Were they the same notes that were secured by this mortgage?
A. Yes, sir.
Q. Was that conversation before or after the mortgage was cancelled by William Foster?
A. It was after the mortgage was cancelled.
Q. How long after?
A. Well, now, I cannot remember. It must have been a year or so.
Q. Did he state anything about the total amount of those notes that had turned up unpaid—that he supposed had been paid?
A. My remembrance of it is that he did mention some amount, and a large figure, but what it was I would not undertake to say.
Q. Did he say that he was endorser on all those notes that had turned up—that he was talking about?
A. No, sir.
Q. Did he state on how many of them?
A. No, sir.
Q. Do you remember whether he stated the amount of the notes that he had sold or endorsed that had turned up unpaid?
A. I do not think that he gave the amount that he had endorsed.
234 Q. Did he say whether all the notes, or only part of them, that had been secured by the mortgage had turned up unpaid?
A. I do not think that he mentioned the mortgage whatever—

just mentioned the notes given for the original purchase-price of the mill—or whether he mentioned all of them as having turned up. I do not remember whether all or part of them.

Q. But you understood that these notes, of which he was speaking, were all notes that Foster had given to William Crawford for the original purchase price of the mill?

A. No, sir.

Q. What notes did he say they were?

A. He mentioned that he had endorsed for Foster several times, and that he had supposed they were paid, and that since this trouble commenced they had been presented to him, and that this transfer was to protect him, and that those endorsements were worth more than that at the time, and that this transfer was for the purpose of securing him.

Q. Did he speak of the transfer as having been merely security in the nature of a mortgage, or as an absolute conveyance?

A. I do not remember that he said anything in relation to that as to whether absolute or just as a mortgage.

Q. But you understood that he said he took the conveyance to save himself?

A. Yes, sir; that is the way I understood it.

C. H. STEWART.

Thos. I. Anderson.

THOS. I. ANDERSON called and sworn on behalf of complainant.

Questioned by WEATHERFORD:

Q. What is your name, age, residence, and occupation?

A. Thos. I. Anderson; my age is 73, December 15th; residence, five miles south of Albany; occupation, farmer.

Q. Are you acquainted with John A. Crawford, William
235 Crawford, and J. H. Foster? If so, how long have you known them?

A. I have been acquainted with them about 35 years, I think; with John A. Crawford, 35, or maybe 33 or 34.

Q. During the time Mr. Foster was engaged in the mill and warehouse business, in the town of Albany, Oregon, did you have business relations with him?

A. I had business relations with Mr. Foster for many years; I think 12 or 14.

Q. What kind of business transactions?

A. Carrying my wheat to him and depositing it with him for storage.

Q. Did you have any wheat in his warehouse or mill in February, 1884, at the time that he made the transfer of the mill and other property to John A. Crawford?

A. I did have some wheat there, stored in his mill at that time.

Q. Was he owing you any at that time? If so, about how much?

A. Previous to that time, for some years, we had made the habit of settling up about the first of December, or once in a year we bal-

anced accounts, and when I sold my wheat I would leave the money to him. We would make a settlement, and if I wanted any money I got it, and what I had left I deposited with him.

(Same question read to witness.)

A. Previous to him making that trade we had a settlement, and then he was owing me three thousand six hundred and some odd dollars. It had been 13 or 14 months before they made the trade that this transaction took place.

Q. Was he owing you at the time the transaction was made with Crawford?

A. Yes, sir. And if you will allow me to make a few words connected with that, relating to it——

By COUNSEL: No; it all goes down, just make your answer.

236 Q. About what time after the transfer was made by Foster to Crawford did you go to the mill or warehouse of Foster to look after your interests?

A. Two weeks after I understood it. About two weeks after he had turned it over I went to him and we had a very long talk about it, and he said to me——

(Objection by Bronaugh, for the def'ts, to what he said to him.)

Q. Where did you see him and what conversation did you have with him, if any, at what time?

(Objection by Bronaugh, for def'ts, as immaterial and incompetent, the conversation appearing to have been after the transfer.)

Question read again to the witness.

A. I saw him in his office two weeks after the change was made.

Q. What office do you refer to when you say in his office?

A. The small brick office that stands east of the mill.

Q. Is that the office that he had occupied in connection with the mill for many years prior to this sale?

Ans. Yes, sir.

Q. When you went there who else was in the mill office, if any one?

A. That time there happened to be no one in the office, and we had a conversation.

Q. I did not ask for the conversation. Who was in possession of the mill and the property connected with it at that time?

(Objection by counsel for def'ts as incompetent and immeterial and calling for an opinion.)

A. I think that the mill was doing very little and he was in the office as usual, and we had maybe half an hour's conversation that day.

Q. Was that conversation in reference to the mill and property connected with it?

Ans. Yes, sir.

237 Q. You may state what he said, if anything, about the sale of the property and the circumstances under which the sale was made.

(Objection by counsel for def'ts as incompetent and immaterial.)

A. He said that he had not sold it; that he had merely turned it over for the saf-ty and benefit of his creditors and himself.

Q. What did — say, if anything, about property being low and, if sales had been made by sheriff's sale, as to making a sacrifice of this property?

(Objection by counsel for def'ts same as above.)

A. He said that if it was sold now it would be sacrificed for a low figure, but that he expected to pay every dollar when it was disposed of, if he did.

Q. What, if anything, was said in that conversation by him about taking in wheat the ensuing harvest and storing it in the same mill and warehouse?

Objection by counsel for def'ts as incompetent and immaterial.

A. He said he was afraid the farmers would not put the wheat to him, and I told him that he could take the wheat in and put it in the name of John Crawford and set the mill agoing and make some more money and clear ahead.

Q. What did he say, if anything, in answer to that?

Objection by Bronaugh, for def'ts, same as above.

A. He said that he had not sold at all. He said that he expected to pay every dollar that he owed.

Q. Did you have a conversation with him at any time shortly after this conversation?

A. Frequently; about every two weeks.

Q. When was the next conversation and where?

A. At the same place and in the same office.

Q. Who else was present, if any one, in the office at that time?

A. We seldom talked much to each other when any one
238 else was present. We oftentimes was alone.

Q. Who was occupying the office and in possession of the books and paper- at that time?

Objection same as above.

A. He was, just the same, sitting at his desk, and I saw no alteration or change.

Q. What did he say, if anything, about Mr. Crawford wanting to sell the mill?

Objection same as above.

A. I said then to him when he mentioned that to me—I said, How are you going to pay your debts if you sell the mill? and he said: "My share, you know, will pay my debts."

Q. Who said he was going to sell the mill?

A. Foster said that Mr. Crawford wanted to sell the mill.

Q. What was said, if anything, about Mr. Foster getting his share if the mill was sold?

Objection by Bronaugh, for def'ts, same as above.

A. He told me that his share would pay all his debts.

Q. Did you have any other conversation with him shortly after that?

A. Not in particular earnest; but that was after this was settled that we had that.

Q. Did you sell him any wheat, or have a conversation with him about selling wheat, a day or two before the sale was made to Mr. Crawford by Foster?

Objection by Bronaugh, for def'ts, same as above.

A. According to that I received from Foster, I did not know there was any sale; merely turned it over for safe keeping for him and us, for the benefit of himself and his creditors.

(Here counsel for def'ts moved to expunge the last answer as not responsive to the question.)

239 Q. What I referred to was a day or two before the transfer of the property by Mr. Foster to Mr. Crawford, as generally understood as a sale. Did you have any talk with him about selling wheat a few days before the time in Feb. when the alleged sale was made?

Same objection by counsel for def'ts.

A. I had no conversation with him a few days or even a few weeks before the transfer, it having been some months before the transfer.

(Here court took a recess till 1 o'clock p. m.)

Court convened at the hour appointed, Mr. Anderson still on the stand, and the case proceeded.

Question- by WEATHERFORD, for complain-t:

Q. What offer, if any, did Mr. Foster make you for wheat, some time shortly before the transfer was made, to be paid by giving his note?

Objection by Bronaugh, for def'ts, as incompetent and immaterial and as leading.

A. He offered me 93 cents, but did not mention any money nor paper nor notes, and I thought it was going to be a dollar, and said I would let it stop till it came to be a dollar.

Q. Did you present your note to Mr. Foster for payment, or talk with him about paying your note, shortly before the failure?

Objection by Bronaugh, for def'ts, as immeterial.

(Q. by witness: About the money due me? Ans. by counsel: Yes.)

A. The last time he gave me the bill I spoke to him about it, and he said to me, "All I owe I expect to pay," and he rendered me a bill of the amount, showing he was owing me so much.

Q. What did he say he was worth?

Objection by Bronaugh, for def'ts, same as last above.

A. He said that his brick block was fetching him in such a rent, I cannot say exactly as to the amount, and his mill property
240 was worth so much, forty or fifty thousand, and him and Mr. Crawford had the city water works, which he valued at, I think he said, thirty or forty thousand, but I would not be sure as to the words. He likewise said he was owner of the mill entirely; that John A. Crawford had nothing to do with it, and that he had six thousand dollars in the Santiam, consequently the water cost him nothing; and he had his dwelling-house and the land it stood on, and several other lots in the town or several other pieces in the town; that he considered himself worth about two hundred thousand, real estate.

Q. What do you mean by having $6,000 in the Santiam?

A. Meaning the Santiam ditch, that carries water through Albany; meaning that it cost him nothing for water.

Q. About when did that conversation occur?

A. That conversation took place, I think, about the time that he gave me the last note due me, which was about nineteen hundred—a due bill payable any day, but I never demanded it, believing that we were friends. I think it was about 13 or 14 months before the change was made.

Q. Did you have a conversation at any time prior to the transfer of this property with John A. Crawford in reference to Mr. Foster's business connected with himself? If so, please state what Mr. Crawford said about it.

A. About the time of the last answer—about the time that I spoke to Mr. Foster when he gave me the last due bill; then two or three days afterwards I was in town and spoke to John Crawford. I asked him if he had anything to do with that mill now, and he told me, "Oh, that is all settled; I have nothing more to do with that mill than you have."

Q. Did you have any conversation with him after this supposed or intended sale?

241 A. Yes; I had a little.

Q. Please state what it was, so far as it refers to the transfer.

A. Well, I rather charged him with lying behind the curtain while Foster was swindling us poor farmers. I told him he would have to give an account for that in the time to come, and he said that he did not know that he had any more account to give than a horse, and I said to him that — he was of that opinion it was a rather poor way of living to lie behind and let Foster swindle the hard-working man out of his hard earnings, and he said he had not done it.

Q. What did he say, if anything, in that conversation about raising money and paying it over to Mr. Foster?

A. He said that Mr. Foster had done him a great deal of harm; that he had to raise $20,000 for Foster.

Q. Did he state whether he got the $20,000 for Mr. Foster? If so, please state.

A. He said that he had got it from British Columbia. Allow me

to speak back two or three words previous to that. Mr. Foster said that he had got it, and I asked him where, and he, Foster, said that he had got it from British Columbia.

Q. Were the words used, British Columbia or Bank of British Columbia?

A. Bank of British *of* Columbia; oh, yes.

Cross-examination by BRONAUGH, for def'ts:

Q. How long after the transfer of the property by Mr. Foster to Mr. Crawford was it that you had this conversation with Crawford when he told you that Mr. Foster had done him great harm and he had to raise $20,000 for Foster and had got it at the Bank of British Columbia? How long after the transfer was that?

A. I think, from the best of my remembrance, it was about two weeks. It was not over two weeks, because I generally went
242 in every two weeks. Allow me to give an answer myself.

By REFEREE: Remember that everything must be taken down.

By WITNESS: Well, maybe the counsel forgot a question, and I might state it myself.

Q. Who was present when that conversation took place between you and Mr. Crawford—any one besides yourselves?

A. I do not think there was. I think we were standing upon the parapet there by the mill or office.

Q. You say, at the last settlement you had with Mr. Foster, about 13 or 14 months before the transfer of the mill to Mr. Crawford, he owed you about $3,000?

A. He owed me about thirty-six hundred, with interest from the end of the year from the time he gave me the due bill.

Q. After the bill rendered?

A. Yes; the last settlement, about 13 or 14 months. It was at that time that he told me that Mr. Crawford had nothing to do with the mill, and that they were partners in the water works, and that he owned everything else.

Q. Was that nineteen hundred that he gave you a due bill for a part of the thirty-six hundred that he owed you?

A. That was the last settlement.

Q. Did you leave the balance of the thirty-six hundred over and above the nineteen hundred standing upon account?

A. It was just standing. Every year we had a settlement. I had a balance of $3,600, and he made me believe that he was worth a great deal—worth two hundred thousand of real estate. I wish to add a word or two more. He said to me that he made $40,000 at one swoop. Him and me was then travelling up the parapet from the mill up to the warehouse.

Q. Was that thirty-six hundred dollars the whole amount that he then owed you?

243 A. Yes; all the money. There was some wheat in the mill, but he paid me for that at various times. So we settled that.

Q. Has he ever paid you any part of that $3,600?

A. Not any; and when he made the turn-over I had no money

had not been in for about two weeks and I had not a dol-

ou felt pretty hard toward Mr. Foster for leaving you in that or turning it over and leaving you out, did you not?

I thought he was the worst man I ever had anything to do with. I think he is a disgrace to America. We had a conversation and spent maybe an hour in his office, and we went over. It left me now, at 73——

Q. You still feel pretty bitter on account of it, do you not?

A. I cannot deny that, although I would not harm him. I rather pity him, even if he should have the money; and he knows that I was a friend to him.

Q. In these talks that you say you had with Mr. Foster in the mill office after the transfer was made, was there any one else present besides you and himself?

A. There might have been one or two in the mill office, but we never took any notice of them. Sometimes when we talked maybe one or two came in and went out. He asked me about it, and I asked him about the ships of flour, and he always told me that he was doing better than he expected.

Q. At the time that he told you that he had not sold the mill, but merely turned it over for saf-ty and the benefit of himself and friends, was there any one else present?

A. No, sir. I asked him what he me-nt by Crawford's selling the mill after telling me that he had merely turned it over to prevent sacrifice, and the next time he said that if it was sold out his
244 share would enable him to pay all his debts.

Q. About how long after the transfer was the conversation in which he told you that when Mr. Crawford sold and he got his share it would enable him to pay all his debts?

A. That would be only about two or three months, because he told me previous to that.

Q. When you told him that the farmers could put their wheat to John A. Crawford and that he could go ahead then the same as ever, what did he say in reply to that, if anything?

A. He said, I think, that John wished to sell the mill, and then was the time that I put the other question to him.

Q. Did he tell you how much John gave him for the mill?

A. Not at all. He scouted the idea of selling. It was merely turned over. Allow me to make a speech now—to explain. You are aware that I am not just bright to keep things in my mind——

(By Counsel Wood: Make it as short as you can; if you want to explain you have a right to do it.)

Q. Did you say what Mr. Crawford asked for the mill?

A. No, sir; he scouted the idea of selling to Mr. Crawford; that he had only turned it over to Crawford for the safety of himself and creditors. Besides, if Mr. Crawford should sell the mill he would have enough to pay all his debts. I said, Mr. Foster, I have known some difficulty about that, if a man turns his property over to save himself from creditors; and he said, "I can trust John."

Here counsel for def'ts move to expunge all that portio... last answer and previous answer of witness to question one... examination which are not responsive to the question. ...d that

Q. Did he say what his share in the mill was? ...itish
A. No, sir.

Q. At the time you saw Mr. Foster in the office either of
245 these times after the transfer when you talked with him did you go into the mill to see who was in there?

A. I did go in once, into the mill, maybe—well, I think, perhaps two months after—and saw Foster, and Crawford was in the mill.

Q. Was that the only time after the transfer that you were in the mill?

A. No; I was in the mill two or three times after that; just merely walked in and came out.

Q. Did you see Mr. Crawford in there any of these times?

A. Yes; two or three times, and likewise saw Mr. Foster.

Q. When was it that Mr. Foster offered you the 93 cents for wheat and you declined, thinking you might get a dollar?

A. It was two or three weeks before the change was made.

Q. I understand you that this talk you had with Mr. Foster in which he told you of the various pieces of property on hand and he considered himself worth $200,000 was 13 or 14 months before the transfer.

A. Yes; if it was required I could give the very day, sir; it was the day he gave me the due bill for nineteen hundred.

Q. Have you got that with you?

Ans. Yes.

Q. Let us see it?

WITNESS: Can I see my counsel first?

Ans. Yes, sir.

A. Witness consults his counsel and answers: It was February 3, 1883.

Q. And you say that it was about this time that same day that that note was given to you that Mr. Crawford told you that he had nothing more to do with the mill than you had?

A. That was some days afterwards. The next time I came in, maybe 5 or 6 days, he said that Mr. Foster had settled all that and he had nothing more to do with it than I had.

Q. Had nothing more to do with what?

246 A. I asked if Mr. Foster had settled all that, and he said that he had nothing more to do with the mill than I had.

Q. At the times after the transfer that you saw and talked with Mr. Foster in the mill office, did you see him doing anything with the books or business of the mill while you were in there?

A. Sometimes I did and sometimes I did not. Several times he was engaged as usual—in the chair at the desk.

Redirect examination.

Questioned by WOOD:

Q. Mr. Anderson, what was the date of the sale?
A. Sixth of February, 1884.
Q. What was the market value of wheat at that time, if you know?
A. To the best of my knowledge, it was from 90 to 91. I did not have it authentic; it was just from some one on the street near the mill.

T. I. ANDERSON.

J. G. Powell.

J. G. POWELL called and sworn on behalf of complainant.

Questioned by WEATHERFORD:

Q. What is your name, age, residence, and occupation?
A. J. G. Powell; age, 44; occupation, farmer; residence, 7 miles from Albany, southeast, in Linn county, Oregon.
Q. Are you acquainted with J. H. Foster and John A. Crawford?
A. Yes, sir.
Q. During the time that Mr. Foster was engaged in the milling and warehouse business at Albany, Oregon, did you do business with him?
A. I did.
Q. Did you have wheat in the warehouse or mill at the time of the transfer of the property from J. H. Foster to John A. Crawford?
A. No, sir; I had no wheat in the warehouse.
Q. Did you have business with Mr. Foster at the mill before that time?
A. Yes, sir; I did.
247 Q. Did you call at the mill upon business?
A. Yes, sir.
Q. Who did you find at the office and in possession of the office and mill?

Objection by Bronaugh, for def'ts, if it should be shown to be after the transfer.

A. I found Mr. Foster in the office, as usual.
Q. When was it?
A. A few days after the transfer.

Objection by Bronaugh, for def'ts, as incompetent and immeterial.

Q. What part of the office did you find him in?
A. Sitting at his desk with his books, if my memory serves me right.
Q. Do you remember how long that was after the attempted sale to Mr. Crawford?

A. I am not positive. I do not think over perhaps 5 or 6 days.
Q. What was your business there at that time?
A. It was to see about a note that Mr. Foster owed me.
Q. Did you have a conversation with him with reference to your business?
A. I did.
Q. What did he say in that conversation, if anything, about his making a transfer to Mr. Crawford?

Objection by Bronaugh, for def'ts, as incompetent and immaterial.

A. I do not think he said anything about the transfer at that time.
Q. Did you have a conversation with him a few days later?
A. Yes; perhaps a week or two; I do not just recollect.
Q. Where did that conversation occur?
A. I think near Mr. Deo's establishment, on First street, in Albany.
248 Q. What did he say in reference to the transfer?

Objection by Bronaugh, for def'ts, same as above.

A. As well as I can recollect, he said—his words would be like this: that he found he was short about ten thousand bushels of wheat when he came to measure, and that Mr. Crawford would buy that in. He further said, I believe, that he had always done an honest business, and he did not propose to go to the penitentiary. That is his words, as near as I can recollect.
Q. Was that all of that conversation?
A. No; he said—he further spoke that Mr. Crawford would buy in that wheat; that the mill would run on as usual, and that he would pay his creditors out of his part of the proceeds—of his part of the profits, I think it was the words he used.
Q. Did he say anything as to whose name the business would be run in?

Objection by Bronaugh, for def'ts, same as above.

A. Mr. Crawford's.
Q. What did he say, if anything, Mr. Powell, about the cause of his financial embarrassment?

Objection by Bronaugh, same as above.

A. He said that the cause was a decline of flour; that he had overdrawn on a cargo of flour, and that it had declined a dollar a barrel. On account of this decline the parties claimed a rebate of a dollar a barrel, and that he was unable to respond, if I remember right.
Q. Did he give the name of the parties at the time?
A. I think not.
Q. What was said, if anything, about the money that should be necessary to carry him over at that time?

249 A. Well, he stated that if he could have been able to raise ten thousand dollars he could have tided over, and that he was then offering to mortgage his brick block to raise money.

Q. Was that one of the pieces of property that was sold to Mr. Crawford?

A. That was what I understood it.

Q. Do I understand you to say that at the time you talked with him he was trying to mortgage that piece of property to raise this $10,000 on that brick block?

Objection by Bronaugh, for def'ts, same as above.

A. I did not state how long prior.

Q. What did he say, if anything, about measuring the bins to ascertain how much wheat he was short?

Objection by Bronaugh, same as above.

A. Well he said he did not think he was short of what he had bought till he came to measure it and found it was 10,000 bushels short of what he had bought.

Q. Did you visit the mill frequently about this time and after?

A. Yes; once in awhile I generally got my flour there.

Q. Who did you find in the office transacting the business?

Objection by Bronaugh, same as above.

A. I think Mr. Foster was always in the office.

Q. Did you transact the business with Mr. Foster or some other person?

Objection same as above.

A. Mr. Foster, as far as those transactions were concerned—those transactions in getting flour.

Q. Did you transact some business for Mr. Ramsey with Mr. Foster?

A. I did; with Mr. Foster.

250 Q. State when it was.

A. Well, it was the last conversation we had; that was part of the business with regard to the money that he owed to Mr. Ramsey.

Q. State what was said or done by Mr. Foster in that conversation in reference to the settlement of the Ramsey matter.

Objection same as above.

A. Well, I was trying to get some money for Ramsey, and he said he expected and he would pay that account off as soon as he could. He said: "I have plenty of property, but it is in hands—that I cannot use it now"—was his words near as I can give them.

Q. Did he say what property he had?

A. No; he did not mention the property.

Q. What payments, if any, did he make on the Ramsey matter at that time?

Objection by Bronaugh, for def'ts, as incompetent and immeterial.

A. He did not pay any at that time; he paid me ten dollars afterwards.

Q. How long?

A. I think about—probably a little over thirty days. I think thirty days was the time he set that he would pay it, but paid a few days afterwards that amount.

Q. Where did this conversation occur?

—. Well, at the office and by Mr. Deo's hardware store.

Q. What did he say as to where he had obtained the money to pay on the Ramsey account?

Objection by Bronaugh, for def'ts, same as above.

251 A. I do not think he said anything about it. He promised me $50 in the first place, but said that he failed to raise it; that he had no way of making money, and that he had failed to raise more than that amount.

Q. Mr. Powell, if you had any conversation with Mr. Foster in reference to this transfer, proceed now and state all that you know about it.

Objection by Bronaugh, for def'ts, to any conversation after the transfer.

A. These two times are the only times that I recollect of having any conversation about the transfer.

Cross-examination by BRONAUGH, for def'ts:

Q. What was the amount of the note that Mr. Foster owed you, Mr. Powell?

A. I think it was $130.

Q. Has he ever paid you any part of it?

A. No, sir.

Q. At any of these times you were about the mill after the transfer did you go into the mill?

A. Yes, sir.

Q. Did you see Mr. Crawford there at any time?

A. I do not recollect. I do not think I did. I think the same hands that were running the mill before were in there afterwards.

Q. You do not recollect whether you saw Mr. Crawford there or not?

A. I do not recollect. Well, I have seen him two or three months after the transfer.

Q. You say Mr. Foster said he found himself about 10,000 bushels of wheat short, and he had always been honest and did
252 not propose to go to the penitentiary if he could help it. Did he not say that he was $10,000 short, instead of bushels of wheat?

A. He said bushels of wheat, if my memory serves me right.

Q. Who else, if any one, was present during this conversation besides yourself and Foster?

A. I do not think any one else, unless it may have been Lorenzo Gray. I would not be positive as to that.

Q. How long was that conversation after the transfer?

A. It was a very few days.

Q. Was it before or after you went to see him about the note?

A. That conversation took place when I first went to see him about the note, which was a few days after the transfer.

Q. It was in that conversation that he said he was 10,000 bushels short?

A. Yes; it was at that time.

Q. Is your memory good?

A. Well, it generally is.

Q. Did you not state on direct examination a few moments ago that at the time you went to see Mr. Foster at the mill about your note there was no talk between you and him about the transfer, and that the talk in which he said he was 10,000 bushels short was on the street about two weeks later than the time you went to see him about the note?

A. I said that the time I talked with him on the street was in regard to the business about Mr. Ramsey. If I am not mistaken this other conversation took place in the office.

Q. When and where was it—in which conversation—that he told you that if he could raise $10,000 that he could tide over
253 his financial embarrassments and that he was then offering to mortgage his brick block to get the money to tide over?

A. That was the conversation in the office.

Q. At the time that you went to collect the note?

A. Yes, sir.

Q. You feel sure about that, do you?

A. Well, yes; I do.

Q. I understand you that this talk in the office when you went to collect your note was five or six days after Foster had transfer-ed the property to Crawford. Is that correct?

A. About that time. I do not recollect positively as to the number of days, but it was only a few days.

Q. You say that he then told you that he had been trying to mortgage this property—the brick block—to tide over his embarrassments. Did he say whether he had been trying before or since the transfer?

A. My recollection is that he was trying before the transfer.

Q. He did not tell you, then, that he had been trying since the transfer to mortgage that property?

A. No, sir.

Q. You say that you transacted that business after the transfer. In getting flour of Mr. Foster how much flour would you get at a time?

A. Well, sometimes more or less. The way we generally did that was simply this: I said that I transacted the business with Mr. Foster from the fact that the same hands were there and the fact that he was taking in wheat for flour. Well, perhaps six or eight bushels at a time.

Q. Mr. Foster, then, being in the office, would receive your wheat and turn over flour to you for it. Is that what you mean?

254 A. That is the way I understand it. Foster did not handle the wheat himself, but the hands were there, and they would make the change. I just took the accounts to the office.

Q. How long after the transfer was it that you called to see Mr. Foster about the Ramsey note?

A. As to the exact time I could not state; it was, perhaps—well, I think I would say between two or three weeks after the transfer, and it may have been a little longer before Ramsey turned the business over to me.

Q. How came Ramsey to turn over the collection of the note to you? Were you an officer or was he owing you, or why?

A. No, sir; neither one; the fact was simply this: That loss had so worked him up in his mind that he was becoming insane, and that he was not fit to transact business, and he handed it to me and wanted me to collect it for him.

Q. What was the amount of the Ramsey note?

A. I think it was $650 or thereabouts.

Q. You say that when Mr. Foster paid you the $10 on that note it was paid thirty days after you first went to see him on the matter of the note?

A. I would not be positive as to the time; it may have been longer than that; I think it was, perhaps, longer than thirty days. I think he renewed the time of the first promise; was to pay $50, and he failed to do it; and he renewed the promise and eventually paid me ten dollars.

Q. Well, as near as you can state, how long after this transfer of the mill property from Foster to Crawford was it that Mr. Foster paid you this $10?

A. Well, from the transfer before I got the $10 I would think it was between sixty and ninety days.

255 Q. What time of the year was it that he paid you the ten dollars?

A. Well, it would naturally be somewhere along in the latter part of spring, from the transfer having taken place in February.

Q. You have been about the mill several times between the time of the transfer and the collection of the $10.00 have you not?

A. Yes, sir; well, I do not know how many times; perhaps three or four.

Q. Was the mill running every time you were there?

A. I think not.

Q. How many times was it not running when you were there after the transfer?

A. I could not say as to that.

Q. But you found Mr. Foster in the office or about the mill every time you were there, did you not?

A. I do not think I found Mr. Foster in the mill about the office. I think every time I have been there since the transfer he has been in the office.

Q. When the mill was not running did it seem to be because there was no wheat to grind, or for what cause?

A. That, I presume, was the cause—that is, after the transfer for some time.

Q. And you say when Mr. Foster paid you the $10.00 he said he had no way of making money and he could not raise any more. He gave that as the reason for not paying you any more?

A. That is the reason.

Q. What was it he said about not intending to go to the penitentiary if he could help it?

256 A. What was it he said? What I stated awhile ago—that he found when he came to measure that he was 10,000 bushels of wheat short, and that he got Crawford to endorse and buy that wheat in; that he had always done an honest business and did not propose to go to the penitentiary. That is what he said.

Q. Was that conversation, when he spoke of not going to the penitentiary if he could help it, in the office or in the street?

A. In the office.

Powell Redirect.

Redirect examination by WEATHERFORD:

Q. I did not understand you, Mr. Powell, whether Mr. Foster told you that he was trying to mortgage the brick block at the time you had the conversation with him or had been trying before the sale.

A. Had been trying.

Q. But he did not say how long before that he had been trying?

A. No, sir.

Powell Recross.

Recross-examination:

Q. I understand you to say that you understood from him that he had been trying before the transfer.

A. That is it—that he had been trying before the sale and not afterward. My answer was that he had been trying before. That is the way I understood him.

J. G. POWELL.

Wm. V. Baltimore.

WILLIAM V. BALTIMORE called and sworn on behalf of complainant.

Questioned by WEATHERFORD:

Q. State your name, age, residence, and occupation.

A. William V. Baltimore; I am 37 years old; occupation, farmer; my residence is in Albany, Linn county, Oregon.

257 Q. Are you acquainted with John A. Crawford, William Crawford, and J. H. Foster, of Albany, Oregon?

A. Yes.

Q. How long have you known them?

A. Well, I have known them a great many years—almost as far back as I can remember.

Q. Did you have any conversation with John Crawford in reference to the purchase by him of the property known as the Magnolia mills and warehouse and the Foster block in Albany, Oregon, from J. H. Foster about the time the sale was made, in February, 1884?

A. No, sir; I had no conversation with him—that is, himself directly.

Q. Did you have a conversation between him and some other parties? If so, please state what he said in reference to the purchase.

A. I heard two conversations, at different times.

Q. Proceed and give the first one, as near as you can.

A. Well, he was talking to a gentleman near Foster's office—I do not think I knew the gentleman—about the trouble, and he said he and endorsed for Foster on several notes—some five thousand, some ten thousand—and they came on him for them and he had to raise the money. Well, in the first place, he found the notes. It seems as though he found them somewhere, and they were not paid, and he asked Foster about them, and he said the interest was paid; but it appears the principal was not paid. The first was $5,000. Then he found another of $10,000; and he found different notes there; the interest was paid, but the principal was not paid on all of them, and it amounted to between $32,000 and $35,000; that he found them at the Bank of British Columbia, and he asked the agent why he did not let him know, and he said, "No; we considered you as good as the bank;" and he said he had to raise the money in a short time; and the next one was in front of Mr. Allen's
258 store. He was talking to Mr. Allen.

Q. Give that conversation.

A. Well, it was just the same, as near the same words as I can give.

Q. Was that before or after the sale?

A. After the sale some time.

Q. About how long after?

A. Well, it was along—it was just a few days before the June election. I think he was talking to Mr. Allen about who to vote for. It may have been the day of the election. I would not be sure as to that.

Q. Did he say anything about where he raised this money to pay off those notes at the Bank of British Columbia?

A. No, sir; he did not state where he raised it.

Q. Did you do business with Mr. Foster during the time that he run the Magnolia mills and warehouse in Albany?

A. Yes, sir; some.

Q. Did you have any business with him about the time of the transfer of the property to Crawford?

A. Well, he was owing me a note, and I might have had a few bushels of wheat in there that I left for flour; just a few.

Q. Did you go to the mill about that time?

A. I went to the mill just a few days after I heard he had sold out.

Q. Who was in the office?

A. There was not any one at that time. Several were waiting to see him; went up the street and met him, and he came down and went in. I did not go in. Several were there that I heard afterward that he was owing.

Q. Did he unlock the door of the office?

A. He went in. I don't remember whether he unlocked the door or not.

259 Q. Were you there shortly after?

A. Yes, sir.

Q. Who did you find in the office when you went in there?

Objection by Bronaugh, for def't-, as immaterial.

A. Mr. Foster and his son Robert, I think, was in there with him.

Q. What business, if any, did Mr. Foster transact in and about the mill, to your knowledge, after the transfer?

Objection same as above.

A. Well, some time after the transaction—I don't know just when—I wanted some feed, and I went and got it and paid the man that was in there, and then after I came out I thought he was owing me and maybe it would be all right, and I went to him and asked him if he intended me to pay for that feed, and he said, "No, I don't," and he went down and told Mr. Beam to pay it back to me.

Q. Did he pay it back?

A. Yes, sir.

Q. About what time was that?

Objection by Bronaugh, same as above.

A. Well, it may have been along about the latter part of February.

Q. What do you know, if anything, about him collecting notes or book accounts there in the office after the sale?

Objection by Bronaugh, same as above.

A. Well, one time I was in there after that. I don't know how long it was. It might have been May or June, and a young man came in and paid some money on a note, and after he went out Robert was attending to the books, and he asked his father whether it was on the old notes or on the new notes. I don't recollect just what answere he made. The man had left the money on the table, and I don't know that I recollect of anybody else only him. He ordered it credited on the note. He credited my account and

260 put it on the note what I was owing him.

Q. Did you notice any apparent change in the ownership in relation to the property in and about the mill?

Objection by Bronaugh, same as above and also as calling for the opinion of the witness and not for facts.

A. No, sir; I did not.

Q. Did you have any conversation with Mr. Foster in reference to his financial embarrassments about the time of the transfer?

Objection by Bronaugh as incompetent and immaterial.

A. I had a conversation with him some time after that; he said that if he could have got $20,000 he would have been all right; the said that he had to do something with his property to save it; that the way property was, is it had been sold it would not have brought much, and at the same time he said that he did not owe a cent below.

Q. What did he mean — "below"?

A. I don't know; I supposed he meant down at Portland or at the British bank; I did not ask for any explanation; he said he did not owe a cent below.

Here counsel for defendant- moves to expunge the last answer as the mere opinion of the witness; that no facts sustain it according to his own statement.

Q. What did he say, if anything, about putting his property out of his hands?

Objection by Bronaugh as incompetent, immaterial, and leading.

A. He said that he had to do it to save his property; to save it from selling for nothing, I suppose.

Q. Did you have a conversation with Foster after the transfer in reference to some wheat that your sister held receipts for? If so, state what it was and all about it.

Objection by Bronaugh as incompetent and immaterial.

261 A. It was my sister-in-law that the wheat was for. I was holding her receipts. She was living in The Dalles, and I went to Foster some time afterward. Crawford had been taking up some receipts, and he, Foster, said that he was a little short, but it was all right now. I did not know as Crawford was to do anything about it, and I was leaving town and I did not have anything more to say to Foster. I told my brother about it and he said he would attend to it, and he took the receipts and went and got Crawford's receipts.

Q. Where did that conversation occur between you and Foster?

A. I think I met him on the street by this office; I was going to see him, and met him coming to his office.

Q. Do you remember what time of year it was?

A. No, sir; I don't; it was just a short time, I think, after the transfer. I think I wrote to her and she wrote back to have it fixed the best I could, and then I went to him a short time afterward; just two or three weeks afterward.

Q. Did you have a conversation with him some time after the pretended transfer in reference to storing wheat in the fall of 1884? If so, state what de said in reference to it.

(Objection by Bronaugh, same as above and also as assuming that the transfer was pretended.)

A. I had none myself.

Q. Did you have a conversation with him or hear a conversation where he stated that if people or farmers would store wheat with him they could have every cent made out of the mill, and the storage as payment made on the debts that he was owing to the farmers?

(Objection by Bronaugh as leading, incompetent, and immaterial.)

A. I don't think I heard him say it in that way. I heard
262 him say that if wheat livened up again that he could pay his debts; that he had made a hundred dollars a day clear in the mill, and that he could do it again.

Q. When and where was the conversation when he made that statement?

A. It was in his office. I think at the same time that he told me if he could of got $20,000. I think in the same conversation.

Q. Did he in any of those conversations attempt to explain the cause of his failure? If so, please state what he said in reference to it.

(Objection by Bronaugh as immaterial and incompetent.)

A. I don't know as he said it to me. I heard him say the first time I saw him after the failure—after the transfer—he said he lost $30,000; that he had 30,000 barrels of flour on hand, and that it dropped a dollar on the barrel and he lost this $30,000.

Q. What did he say, if anything, about always purchasing wheat before he ground it?

(Objection by Bronaugh, same as above and as leading.)

A. I have heard him make that remark a great many times before he transferred his property; that he never ground wheat until he bought it. He would sometimes ask me if I wanted to sell; that he was getting a little short; that he would not grind any till he bought it; he seemed anxious to get a little ahead.

Q. Did you have any conversation with him in regard to the amount of flour that he had afloat about the time of the failure?

(Objection by Bronaugh as incompetent and immaterial.)

A. I don't know as he did, any more than the amount of flour that he said he had on hand when it dropped.

Q. What was the amount that he said he had on hand?

A. 30,000 barrels.

263 Q. What time was it that he told you that?

A. It was just a few days after the transfer that I saw him at the office with those men, and he was telling it to the crowd; Mr. Powell was one of them, and I am pretty certain Mr. Alison Knox was one of them—I said Alison Knox; it is the one that lives in Albany; I don't know his given name—and he said he had lost $30,000 and told us how he lost it.

Cross-examination by BRONAUGH:

Q. In these talks you had with John Crawford about these old notes of Foster's that had come to light on which he was endorser did he say how recently he had discovered that these notes were in existence and that he had been notified of it?

A. Why, it was about the time of the transfer; it was just a few days before that he became aware of it.

Q. About how much did you understand from him was his liability on those notes?

A. Well, he said he had endorsed to the British bank amounting to between $32,000 and $35,000.

Q. How much was that note that Foster owed you at the time of the transfer?

A. The face of the note was nine hundred dollars—the principal.

Q. Has it ever been paid or any part of it?

A. Nothing but the little account that he put on the note.

Q. How much was that?

A. Well, the feed that I got, and he ordered the man to pay it back—six and a half—somewhere along there—and then the amount that I owed on the books made it about $14,12; that he put on the back of the note.

Q. Did you ever say anything to Mr. John Crawford about
264 his crediting your note with that account?

A. No, sir; I don't think I did.

Q. Do you know whether John Crawford knew at this time or afterward that Foster did credit that note on that account?

A. No, sir.

Q. Were you ever in the mill after the transfer?

A. Yes, sir.

Q. How many times?

A. Well, I could not say how many times. I was in there a few times that summer after the transfer.

Q. Did you ever see Mr. Crawford in the mill at any of those times?

A. No, sir; I never saw him there.

Q. Who did you see in the mill?

A. Just the hands that had been in there in the fall; the mill nands and Mr. Foster in the office.

Q. Do you know the amount of that note that you saw some man pay off there in May or June?

A. No, sir; I don't think he paid it off; he only made a payment on it, and his son asked what note he made the payment on. I supposed it was to be credited to him on the note.

Q. You don't know the amount that he paid?

A. No, sir; I don't know the amount of the note nor what note; a few twenties that he laid down on the table. I was in there and saw it. I did not pay any attention to it.

Q. When Foster said that if his property was sold at that time it would bring little or nothing did he say at what kind of sale?

A. Well, I am not certain whether he did or not. I don't know but what he did say at sheriff's sale; I would not be positive.

Q. Mr. Weatherford asked you the question whether Foster stated the reason of his putting his property out of his hands, and
265 you answered that he said he had to do it to save it from selling for nothing. Did Foster use any such words as "put his property out of his hands" in that conversation?

A. I don't know whether he used the words "put his property" or whether he had to do something to save it.

Q. Did he not say in substance that he had to sell it as he did to keep it from being sold by the sheriff for nothing?

A. He did not say anything about selling it all; he never used that word.

Q. What word did he use?

A. I think he said he had to do it or something to keep it from being sold out, and went on to explain what his property was worth.

Q. Did he say what the mill proporty was worth or what he considered it worth in that conversation?

A. I don't think he did. If he did I don't remember it.

Q. What did he say about the brick block?

A. Well, he spoke of trying to borrow money on it. I think he said he tried to mortgage it for $20,000, and he blamed the agent—I think Burkhart—for not getting it. He explained that he was getting $3,000 in coin annually from it, and said it was better than farms, because it was a sure thing every year.

Q. Did he mention the value of any other property?

A. I don't think he did.

Q. What was the amount or value of the wheat receipts belonging to your sister-in-law, issued by Foster and taken up by Mr. Crawford?

A. Well, I could not say. I don't think I have ever seen the receipts since then; probably three or four hundred bushels. There might not have been quite so much. My brother got it fixed. It might not of been so much; I can't remember.

266 Q. Who was present when you heard Foster say to some one else that if wheat would come up he could soon pay his debts; that he had made a hundred dollars per day in the mill and could do it again?

A. He said that to me.

Q. Well, who was present?

A. I can't remember now. It was in his office. Robert, his son, might have been back in the room there. I don't remember.

Q. Did Foster say that he had been trying to mortgage the brick block for $20,000 before or after the transfer—that is, whether the effort to mortgage it was made before or after the transfer?

A. I think it was just before.

WM. V. BALTIMORE.

Here court adjourned to meet at the same place to-morrow, the 10th day of November, at 9 o'clock a. m.

Court convened at the hour appointed and the case proceeded.

V. H. Caldwell.

V. H. CALDWELL called and sworn on behalf of complainant.

Questioned by WEATHERFORD, counsel for complainant:

Q. State your name, age, residence, and occupation.

—. V. H. Caldwell; aged 55; residence, Albany, Linn Co., Oregon; occupation, farmer.

Q. Are you acquainted with John A. Crawford and John H. Foster?

A. Yes, sir.

Q. Have you been doing business with J. H. Foster when he was engaged in the mill in Albany?

A. Yes, sir; I have done considerable when he was in the business.

Q. Do you know about the transfer of the mill and other property connected with it by J. H. Foster to John A. Crawford?

A. Well, I know there was a transfer made, but just how about it I don't know.

267 Q. You know about the time?

A. Yes, sir.

Q. Did you have any wheat in the warehouse at that time?

A. I did.

Q. Did you have any conversation with Foster or Crawford in reference to the transfer of this property? If so, you may state what it was.

A. Well, Mr. Foster, told me——

(Here objection by Bronaugh, so far as Foster's conversations are concerned, if after the transfer, as being incompetent and immaterial.)

(WITNESS:) Well, you say in relation to Crawford here too. He told me that he had bought the mill property there.

Q. What did he say about it?

A. Well, just the words I don't remember now, but, as well as I remember, he said he had bought the property and that Foster would run the mill, I believe, as he had been running it; that was at the time of the transfer or just after the transfer.

Q. What did he say, if anything, about the people storing wheat with Mr. Foster during the fall of 1884?

A. Well, he had a short conversation, just after or before, I think, the storing commenced—I am not certain whether just after or before, but about harvest time—and he asked me if I thought the people would store with Foster, and I told him I did not know they would.

Q. That was John A. Crawford?

A. Yes, sir; John A. Crawford.

Q. Were you in or about the mill frequently after the transfer?

A. Yes, I was there; I got my flour there all along until some time this spring—I guess, May or June. I took a load of wheat to the custom mill, but before that I got my flour there altogether.

Q. For a number of months after the transfer who was in charge managing the mill business?

268 A. Well, my understanding was that Foster was, or at least he told me so, that he was running the mill.

Q. Did you have any talk with Foster at any of those times in reference to the wheat in the warehouse being short or otherwise; if so, what was it?

Objection by Bronaugh as incompetent and immaterial.

A. Well, as to the conversation in relation to that, I don't know as the conversation I had would be of any weight to either party. I don't know that it would.

Q. What did Mr. Crawford say, if anything, about Foster's owing him?

A. Well, he told me that he had loaned him money and endorsed for him a number of thousand dollars; the amount I don't remember, but it was a number of thousand.

Q. As much as $75,000?

A. No, sir; I think it was some sixty odd thousand that he and his brother endorsed for him; but just the number of thousand that either had endorsed I don't remember—that is, that they individually endorsed for him.

Cross-examination by BRONAUGH, for def't:

Q. Did Mr. Crawford tell you in this conversation, in which he said that he had bought the mill and Foster could run it the same as he had been running it, did he tell you how much he had paid for the mill?

A. Well, if he — I don't remember now; perhaps he did, but if so I don't remember the amount that he paid for the mill. There was other property in the transaction.

Q. Were you about the mill often after the transfer?

A. I was there very frequently; sometimes every week and sometimes maybe two or three weeks I would not be there. I

269 have stored wheat there at the mill ever since I have lived there.

Q. Did you ever see Crawford about the mill?

A. Yes; he was often about there after the transfer and even before the transfer.

Q. Are you sure that Mr. Crawford said that he and his brother together had loaned or endorsed for Foster as much as $60,000?

A. I am sure of it, and something over, but the amount over I can't say. He claimed between $60,000 and $70,000.

Q. Did he say anything in that conversation about taking up Foster's wheat receipts as making a part of the sum?

A. I don't think he did.

Q. Did Crawford, after the transfer, take up any wheat receipts that Foster had given you?

A. Yes; my way of doing was, when I stored my wheat—you know the way of storing wheat is to take checks by the load—and when I got my wheat all stored I returned the checks and

took a warehouse receipt for the whole amount; and my recollection is that when I stored my wheat I returned the checks and took a receipt from Foster, and Crawford bought this receipt from me.

Q. Did he pay you the money for it or give you a receipt for it?

A. Well, I don't know as you would call it either. He gave me his note, payable at a certain day.

Q. For how much?

A. Do you mean what amount of money or wheat?

Q. Yes; wheat or money either.

A. Well, the amount of wheat, I remember that, but I don't know that I do remember the amount of money without counting it up. The amount of wheat was 2,535 bushels; the amount of money would be $1,900 and some odd. I don't remember the exact amount.

Q. Has Mr. Crawford paid that note?

270 A. The note is settled; yes.

Q. Refresh your memory and state if Crawford did not pay you part cash at the time and give you a note for the balance.

A. No, sir; not at that time. I was to wait ninety days for the note. At the end of that time, why, he paid part, and then I loaned him the balance and it was settled afterward; but at the time of the sale I received no money.

Q. Did the $1,900 pay you in full for the 2,500 bushels of wheat?

A. No, sir; I think that there was something over, but I don't remember just the amount over. I don't remember just what it was per bushel—77 or 78 cents. I know it amounted to some $1,900 and some over.

Q. Do you recollect how much was over—how many dollars?

A. Over the $1,900? No, sir; I don't.

Q. How long after you sold the wheat to him before he paid you the balance?

A. Well, none of it was paid till this last summer; last July I think it was that we settled up in full. I sold him another crop or part of a crop since then.

Q. Did you deliver that at this mill?

A. Yes, sir.

Q. In what year was that?

A. That was 1885. This is 1886. Yes; that was in 1885.

Q. Who received your wheat when you delivered it at the mill?

A. Well, I think Mr. Crawford here; if you mean that I delivered in 1885, I think he received it, or perhaps Mr. Beam, or perhaps some of the other hands around the mill.

Q. Was Foster about the mill at that time?

A. Oh, I saw him about the mill at that time.

Q. Did you see him in the office?

271 A. Yes, sir; I saw him in the office sometimes, sometimes about the mill, and sometimes about the warehouse.

Q. Did Mr. Crawford pay you for all the wheat you had there, both that you stored with Foster and that you took to Crawford?

A. All that I sold he did; it is all settled for.

Redirect, Caldwell.

Redirect examination:

Q. The whole crop of wheat that you had in the warehouse at the time that Foster made the transfer was sold to Crawford and paid for by his note—something like $1,900.00—was it?

A. Yes; it was $1,900.00 and some few dollars, but just what was over I don't know. I don't know as it makes any material difference, but it was included in the note.

V. H. CALDWELL.

John Connor.

JOHN CONNOR called and sworn on behalf of complainants.

Questioned by WEATHERFORD:

Q. State your name, age, residence, and occupation.

A. John Connor; aged 66; Albany, Linn county, Oregon; occupation, banker.

Q. What is your business, Mr. Connor?

A. Banking.

Q. How long have you been in that business?

A. Since February, 1871.

Q. In Albany, Oregon?

A. Yes, sir.

Q. Are you acquainted with J. H. Foster, of Albany?

A. I am.

Q. Have you done business with him during the time you have been running the bank, more or less?

A. Yes, sir.

Q. Did you have a conversation with Mr. Foster during the time that you have been engaged in banking in reference to a mortgage for something like $10,000 given by him to William Crawford upon his mill property?

272 (Objection by Bronaugh as incompetent and immaterial.)

A. Yes, sir.

Q. Please state what he said, if anything, in reference to the same being paid, and, as near as you can, the time.

A. I did not refresh my memory with the books before I came down. My impression now is that it was the latter part of 1879 or fore part of 1880, but it might have been 1878—between '78 and '80. I think I spoke about that mortgage, and he said it was paid.

Q. What object had you in enquiring of Mr. Foster whether or not the mortgage had been paid?

(Objection by Bronaugh, same as last above.)

A. He was owing me quite an amount at that time, and the cashier, in looking over the records, found it was not cancelled; that was the ground or reason that I asked in reference to it.

Cross-examination by BRONAUGH:

Q. Did you tell Mr. Foster at that time that a mortgage appeared to be uncancelled on the records?

A. I did.

Q. What did he say to that?

A. I remember no answer, only that it had been paid. He may have said that he neglected to cancel it. I don't say that he said that, but that he said that it was paid and settled.

Q. How much indebtedness was Foster owing you at that time?

A. Well, I think $20,000 and upwards.

Q. Has it been paid since?

A. Oh, yes; long ago; he secured for it.

Q. Was he owing you at the time he transferred the mill to John A. Crawford?

A. Yes, sir.

Q. How much?

A. There was one note of $5,000 signed by Mr. Crawford and Foster; 5,000, I think; it might have been six. There was
273 one note that A. Pearce made, made payable to the order of Foster & Co., endorsed by Foster & Co.

Q. Did you state the amount of that Pearce note? I will ask you to examine this note and see if it is the same one.

(Here witness is shown a note.)

A. This is the same note last referred to.

(The note is dated Sept. 18th, 1883, and given for $5,000.)

WITNESS: There was another note.

Here counsel for defendants offers the note above referred to in evidence and asks that it be received and marked "Defendants' Exhibit 1 (One)," which was done.

(Objection by Weatherford, for complainant, to the receiving of the note, "Exhibit 1," in evidence because it is immaterial, irrelevant, and not cross-examination.)

Q. State whether the notes of which you have spoken, which were owing to you by Foster, have been paid; and, if so, by whom.

(Objection by Weatherford, same as last above.)

A. The note in Mr. Crawford's name was paid by him, Crawford. The note made by Mr. Pearce was paid by Pearce.

Q. Please examine these two notes, Mr. Connor, and state whether they are the notes of which you have spoken.

(Two notes shown to witness.)
Objection by Weatherford, same as above.)

A. I spoke of one note and not of these two notes.

Q. Well, if either of these is the one identify it.

A. My impression now is that it is the six thousand note; but, without referring to the books, I would not swear positive, and I

won't swear positive but what both of those notes were paid afterward, and paid by Crawford after Foster sold to him.

274 Q. Don't you remember that Mr. Crawford did pay both of these notes by giving you his note for the amount mentioned in both of these that was due, and that afterward he paid that note?

A. I could not swear to that.

(Objection by Weatherford, same as above and also as leading.)

A. I don't remember of his giving his note, but I am certain one of those notes was paid after the sale; whether both were paid by Crawford I could not now state.

Q. You could state by referring to your books and refreshing your memory, could you?

A. Certainly I could, or the cashier could.

JOHN CONNOR.

John Chriswell.

JOHN CHRISWELL called and sworn on behalf of complainant.

Questions by WEATHERFORD:

Q. State your name, age, residence, and occupation.

A. John Chiswell; aged 48; residence, Albany, Linn Co., Oregon; occupation, miller.

Q. Are you acquainted with Mr. J. H. Foster?

A. Yes, sir.

Q. Did you work for Mr. Foster during the time he was running the mill known as the Magnolia mills, in Albany? If so, state the time your commenced, and the whole time.

A. I commenced in August, 1883; worked out that year and through January, 1884, and I quit during the February, I think the second of February, 1884.

Q. Did you work for him after that time again?

A. Yes; I did.

Q. When did you commence and how long before you quit?

A. Well, I worked just occasionally—just a few days when he needed me.

275 Q. When did you do the last work for him in the mill?

A. Well, I think it was the last few days in August, 1884.

Q. Who paid you for that work?

A. Mr. Foster.

Q. From whom did you receive your orders for work after along about the sixth or seventh or February, 1884?

(Objection by Bronaugh as immaterial and because it has already been shown by complainant's witnesses that Crawford left Mr. Foster as his agent to run the mill for him after the transfer.)

A. From Mr. Foster, or he might have sent a man there to my house to tell me to go up to work occasionally.

Q. Who paid you for that work?

(Objection by Bronaugh, same as last above.)

A. Mr. Foster.

Q. Did you have a conversation with Mr. Foster in reference to working for him some time in the spring of 1884? If so, please state it.

(Objection by Bronaugh as incompetent and immaterial.)

A. I believe I met Mr. Foster one day after the failure, and I had been doing some grinding for him, and he spoke to me about coming to grind again for him, and I said I did not know about that grinding up there. I said, Mr. Crawford seems to have something to say there; seems to threaten to stop us from grinding any more there. Mr. Foster replied, "I have something to say there; some interest there yet," or something like that. Some of the wheat belongs to me. That is just what he said.

Cross-examination by BRONAUGH, for defendants:

Q. Did Mr. Foster use the words you have just used and say that he had an interest there?

A. He said like this, that "I have something to say there yet. Some wheat there belongs to me."

276 Q. Is your last answer the words used by Foster, as near as you can recollect, and the whole that he said at that time on that subject?

A. I met him at the corner of the street there, just above my house, and he spoke to me something about coming up to grind.

Q. Please answer my question. (Question read to witness.) Was it all that Foster said to you at that time upon that subject?

A. I think it was.

Q. Why did you quit working for Foster about the second of Feb., 1884?

(Objection by Weatherford, for complainants, as immaterial and not cross-examination.)

A. I quit Saturday night, I think; that was some time about Wednesday or Thursday of the next week the failure was, and the mill was very nearly shut down when I quit. There was no work for me to do.

Q. Did not Foster about that time or very soon afterward tell you that he had sold the mill and had nothing more to do with it as the reason why he did not employ you?

(Objection by Weatherford, same as last above.)

A. No; he never did.

Redirect.

Redirect examination:

Q. Who was in possession of the mill at the time that you were working there after the sixth or seventh of February, 1884?

(Objection by Bronaugh as incompetent and immaterial.)

A. Well, I always understood that Foster had possession of the mill.

Recross, Chriswell.

Recross-examination:

Q. How did you understand that?
A. Well, he was there in the usual way; that is all. I used to see Mr. Crawford there, too.
277 Q. Did you see Mr. Crawford there frequently after the transfer?
A. Yes, sir.
Q. What would Crawford be doing when he was there?
A. I don't know, sir.
Q. What would Foster be doing?
A. Well, he was running the mill, or I was running the mill under him. I was doing the business for him.
Q. Did you know whose money it was that he paid you for your services?
A. Well, I don't know that I could swear to that.
Q. Do you know where he got the money from?
A. No, sir; I don't know as I can say where he got it.

Redirect.

Redirect examination:

Q. Is it not a fact that Mr. Crawford was around the mill before the transfer about the same as he was afterward?
A. Yes; just the same.
Q. It had been his custom for as long as you had worked there, had it not?
A. Yes, sir; it had been his custom.

(Here objection by Bronaugh to all of the last redirect examination as leading.)

JOHN CHRISWELL.

W. H. Goltra.

W. H. GOLTRA called and sworn on behalf of complainant.

Questioned by WEATHERFORD:

Q. State your name, age, residence, and occupation.
A. W. H. Goltra; aged about 52; occupation, farmer; residence, Albany, Linn county, Oregon.
Q. Are you acquainted with J. H. Foster?
A. I am.
278 Q. With John A. Crawford?
A. I am.
Q. How long have you known them?
A. Something over thirty years.
Q. Did you transact any business with Mr. Foster during the time he was running the Magnolia mills, at Albany; if so, what?
A. I did; mainly in storing grain and selling wheat to him.

Q. Did you store wheat with him in the fall of 1883?

A. I did.

Q. What conversation, if any, did you have with John A. Crawford in the fall of 1883, just prior to the time for storage of wheat, in reference to the financial standing of Mr. Foster?

A. I don't remember having a conversation in the fall. The conversation that I had with him in reference to that was in June, 1883—in the latter part of June, I think. I have not the exact date.

Q. Please give the exact conversation.

(Objection by Bronaugh as immaterial.)

A. I asked Mr. Crawford as to Mr. Foster's financial standing and what interest he owned in Foster's mill. His reply was that "I own no more in the mill than you," or words to that effect. I then remarked that some thought that Foster owed him considerable or he had an interest in the mill. He further replied, "He neither owes me nor have I any interest in the mill." That might not be his exact words, but that is the substance.

Q. What did you have in view when you asked Mr. Crawford those questions?

(Objection by Bronaugh, same as above.)

A. I asked in view of the storage of the crop then on hand—of grain—as I did not wish to store it all in one place. I wished to store it in different places.

Q. Did you store with Foster in the harvest of 1883?

A. Yes, sir.

Q. How much?

A. I don't remember. I think something near 3,000 bushels in the fall of 1883. I don't remember the exact amount.

279 Q. Was that wheat still there at the time of the transfer, in February, 1884, of Foster to Crawford of the property known as the Magnolia mills?

A. I sold Foster the wheat a few days before that and took his note at thirty days' payment.

Q. How long before the date of the transfer did you take the note?

A. I don't remember. I think about three weeks, or maybe not quite so long; maybe longer.

Q. Has that note ever been paid?

A. No, sir.

Q. Did you call to see about that business with Mr. Foster about or shortly after the transfer?

A. Mr. Foster came to me. I did not go to him after the transfer. He came to my store, and we had a conversation about it.

Q. State the conversation that you had at that time.

(Objection by Bronaugh as incompetent and immaterial.)

A. Well, I could not state the exact language; the substance was that he had been disappointed and could not get money from Portland. He expected to get $10,000 and did not get it, but that he expected to pay me, and also the other creditors, when times became better.

Q. What was said, if anything, about his continuing business?

(Objection same as above.)

A. He said that—well, in that conversation he did not say he expected to continue his business at all—at that conversation. After that he told me that he wished to get in all the wheat he could, and that the profits of the mill should go to his creditors. I had several conversations with him, Mr. Foster.

Q. Do you remember how long after the failure it was that he told you that he wanted to get in all the wheat he could and let the profits go to his creditors?

280 A. That was during the summer, before the harvest, of 1884.

Q. What was said, if anything, by you about Crawford signing receipts for wheat?

(Objection by Bronaugh, same as above.)

A. Well, during one of the conversations he was speaking of getting in wheat. I remarked that I did not think he could get much unless he could get Crawford to sign the receipts, as the property had been assigned to him. He said that he thought he could get him to do that.

Q. Did you have a conversation with Mr. Crawford shortly after the transfer in reference to the transfer and the amount paid for the property?

A. I did.

Q. Please state what he said in regard to that trade, and where was it?

A. That conversation happened at the corner of my store, where I was keeping store at the time, in his building, in which he told me that Mr. Foster owed him $76,000. I asked him how he came to let him owe him so much without having any security. His reply was, most of it was in the Bank of British Columbia; old notes that he had supposed were paid. Interest had accumulated to a large amount. He did not state the amount; he said almost $76,000.

Q. What was the amount that he said he had given for the property?

(Objection by Bronaugh, same as above.)

A. $70,000.

Q. What did he claim that Foster owed him, if anything?

A. He said that Foster still owed him $6,000; that he supposed he would never get any of it.

Q. What did he say, if anything, in reference to paying the Bank of British Columbia?

A. He said he had to hustle to get the money to pay it;

281 hustle or rustle—something like that.

Q. Had he paid it at that time?

A. He said he paid it, but it crowded him to do so.

Q. Did you have a conversation with John A. Crawford in refer-

ence to a talk you had with Foster about storing wheat in the warehouse or mill before the harvest of 1884?

A. I did.

Q. You may state what Mr. Crawford said in reference to that.

A. That was in reference to the storage of wheat. He said that what Mr. Foster had promised would be carried out; that Mr. Foster was all right if people only understood him, was his language.

Q. Did you have any other conversation with him, Mr. Goltra?

A. Mr. Crawford? Yes, sir; but not in reference to that.

Q. Was anything said by either Foster or Crawford before the harvest of 1884 in reference to charging any storage on wheat if put in his warehouse? If so, state.

(Objection by Bronaugh, so far as statements by Foster are concerned, as incompetent and immaterial.)

A. Mr. Foster seemed to be doing business at the mill, and solicited the storage of my wheat, and said it should be no storage on wheat stored with him or with us, I think was the words used. This conversation with Mr. Crawford was the same day, and after that I wanted to know if he agreed to that proposition.

Q. What was his answer?

A. His answer was that whatever Mr. Foster had promised would be carried out, for Foster was all right, if people only understood him.

Q. Were you about the mill and warehouse frequently after the 7th of February, 1884, and during the spring and summer?

A. I was there a number of times.

Q. Who was transacting the business in and about the mill.

282 A. Mr. Foster, so far as I could see, had control.

Cross-examination:

Q. How much was the amount of the note that Foster gave you for the wheat you had stored with him in the fall of 1883?

A. I think it was either $2,460 or $2,640; something like that. I don't know positively. I have not seen the note for a long time.

Q. You feel disappointed and cross towards Foster about not getting the money on that note, don't you?

(Objection by Weatherford as immaterial, incompetent, and not cross-examination.)

A. It would not seem that I was very cross, for I went on and stored the next crop with Foster. I stored more than I had ever done before with him.

Q. You say you went on and stored wheat with Foster afterward; was it with Foster or with Crawford that you stored afterward?

A. The receipts were given in Crawford's name. Mr. Foster solicited the storage of the wheat.

Q. Were those receipts given by Crawford honored and paid?

(Objection by Weatherford as immaterial and not cross-examination.)

A. The wheat I stored in the fall of 1884 was paid for.

Q. By whom?

A. Mr. Crawford paid for some in 1885; I don't remember the date.

Q. In the conversation in which you say that Crawford said that Foster owed him $76,000, and that he gave $70,000 for the property, did he say what property?

A. He did not.

Q. Was there any one else besides yourself present at that conversation?

A. Not at that one; no, sir.

Q. Was there any one else besides yourself present at any
283 of those conversations you had with Mr. John A. Crawford?

A. The conversation I had with him in regard to storing the wheat my son was present.

Q. Was there any one else present when you say he spoke of these old notes in the Bank of British Columbia that he had supposed were paid, but found they were not?

A. No, sir.

Q. At any of those times that you were about the mill after the transfer did you see Mr. John A. Crawford there?

A. I have seen him frequently about the premises, as he lived close by there; no more after than before.

Q. How far is his residence from the property?

A. About a block away. It is on the same water block, I think they call them there. There is no street between the mill and his residence, if I remember right.

Q. How long have you known Crawford and Foster to be intimately acquainted with each other?

A. Something over thirty years, or about that time.

Q. In what business, if any, was John A. Crawford engaged prior to the transfer of the mill property to him by Foster?

A. Well, his business was principally keeping up the Albany and Santiam ditch and renting the water.

Q. What did he seem to be doing when he was around the mill both before and after the transfer?

A. During the following year do you have reference to?

Q. After the transfer and before—both; state first before the transfer.

A. I never saw him doing anything about the mill except about the water work-, or something that way connected with the city of Albany—that is, I have reference to the following year. Since that he did put in the mill-dam last summer a year ago. I think
he oversaw that, or at least he was about there a good deal.
284 I don't know that he oversaw it.

Q. Did you see him there more frequently before the transfer or after the transfer?

A. Well, I could not say that I noticed any difference for the next year after the transfer.

Q. Have you noticed any difference since that?

A. I have seen him about more since that. He put in the dam since that, or it was put in; I don't know that he put it in.

Q. Is it not a fact that for some years before the transfer and since the transfer that Mr. John A. Crawford has spent a good deal of his time in friendly conversations; that he told friends and acquaintances about Albany that he had no steady, every-day employment to keep him busy?

(Objection, Weatherford, as immaterial and not cross-examination.)

A. His work was mainly with the water ditch, so far as I know.

Q. The question was whether he did not spend a good deal of time in talking around among his old acquaintances—sitting down and chatting and talking?

A. He never had many conversations with me. He talked very friendly, I suppose, with others, so far as I know.

Q. Was any one present when you had the conversation with Foster about storing your wheat in 1884?

A. I think not.

Q. Was there any one present and near enough to hear the conversation in your store in which he said he had been disappointed in getting $10,000, but expected to pay you and others if times got good?

A. There might have been; I am not certain.

Q. Was there any one else present at the conversation you say you had after that with him, in which you say that Foster said he wanted to get all the wheat he could to grind, and the profits would go to his creditors?

A. I don't remember that there was.

Q. Was there any one else present when you say Foster
285 said that he thought he could get Crawford to sign receipts for wheat?

A. I don't think that there was; I think not.

Redirect.

Redirect examination:

Q. The dwelling-house in which Mr. Foster resided at the time of this transfer was included, was it not?

A. Yes; that was included.

Q. Who has kept that piece of property from that time up to this, if you know?

A. J. H. Foster.

Recross.

Recross-examination:

Q. How do you know that Foster's dwelling was included in the transfer?

(By FLINN, counsel for def'ts:) That is admitted in the pleadings.

A. Mr. Crawford told me so.

Q. When did he tell you so?

A. The first conversation I had with him after the transfer. It was understood that it was all of Mr. Foster's property.

Q. That is, he gave you that understanding in that conversation?

A. That it was all of Mr. Foster's property. I don't know that he mentioned the dwelling specially, but it was all of his property.

Q. Did you not say a little while ago, in answer to my question whether Crawford said or told you what property was transferred to him for the $70,000 consideration, that he said nothing about what property was transferred—did not mention the property?

A. He did not mention what property, but it was understood that it was all of Mr. Foster's property; he might have enumerated it. I do not think he did. It was always understood in this conversation that it was all of his property.

Q. Do you now recollect that he did especially mention it?

286 A. I do not; but I saw it in the deed.

Q. Where did you see the deed?

A. I saw a record of it at least in the court-house. I felt interested enough to go and look at the deeds.

W. H. GOLTRA.

Here court took a recess till half past one o'clock.

Court convened at half past two and the case proceeded.

Dr. J. L. Hill.

Dr. J. L. HILL called and sworn on behalf of complainants.

Questions by WEATHERFORD:

Q. State your name, age, residence, and occupation.

A. J. L. Hill; aged 42; residence, Albany, Oregon; occupation, physician.

Q. Are you acquainted with John A. Crawford?

A. I am.

Q. Did you have a conversation with Crawford in the course of a year or so ago in reference to what moneys, if any, that J. H. Foster was owing to him? If so, please state, as near as you can, when and where the conversation occur-ed, and what was said by him in reference to Foster's financial affairs.

A. Some time—it must have been three or four years ago—it was not a year ago. I know it was—I presume three or four years ago. I can't state the time I had a conversation with him. It was not a great ways from Foster's mill, in Albany. We had been, I believe, looking at the water works. Mr. Crawford told me that he owned half of the water works; that Foster had too many irons in the fire, or some such remark, or something to that effect, and had wanted him to take a half interest in the water works, which he did. Well, I told him that I supposed he was interested in everything—the whole affair—that Foster had there; that it was J. H. Fos-

287 ter & Co., and my understanding was all the time that he was the company, and he stated that he did not own any-

thing in company with Foster except a half interest in the water works, and that he did own. I made some such remark as I did because I had heard it said or had got the impression that Foster was somewhat shakey financially, and he said, so far as he knew, Foster was as good as any man, but that at one time he owed Crawford either 20 or $24,000. My impression is that it was either one or the other of these sums, but I am not certain which, but it was in the neighborhood of one of these sums; that he was as good as anybody, so far as he knew, and I think he said that he had given the railroad $5,000, my impression is, and if he had been depressed he would not have given that amount; and that is all that I remember of him telling me.

Q. Where is the water works situated, Dr., there in Albany?

A. Well, the machinery for running it is there at the mill.

Q. Adjoining it?

A. Yes; the house is adjoining the mill.

Q. That is where the conversation occur-ed?

A. No; we were not right there. We had been examining it, but not right there, when the conversation occurred.

Q. Was anything said in that conversation by Crawford as to a mortgage that he held at one time against the mill property?

A. No; he said nothing about a mortgage—that is, my impression is he said there that Foster had owed him, or he had as much as that to secure, I am not positive which; but he said it was paid.

Cross-examination by FLINN, for defendants:

Q. You do not know, then, whether he said Foster owed him or that he went security for this 20 or $24,000?

A. No; I don't know which he said, that Foster owed him or he stood for that amount, I am not positive which; but he had
288 paid it, and he did not owe him anything now. I don't know which he did say at the time, but he said one or the other.

Q. Did he say he did not owe him anything, or that he was not security for him any more?

A. No; he said he did not owe him anything; that it was paid, and he did not owe him anything. He said that in the way of speaking of his financial condition, so far as he knew, he was as good as any man.

Q. Was this conversation before or after the failure of Mr. Foster when he sold out to Mr. Crawford?

A. It was quite awhile before.

Q. Was it about the time that Foster paid his subscription to the railroad?

A. I don't know anything about that, for I don't know when he paid the subscription to the railroad or whether he ever paid it or not, but it was long after the railroad, for the railroad had been built four or five years. The railroad was built long before that.

Q. Was not the railroad subscription made about 1882?

A. I don't know anything about it. I don't know when the sub-

scription was taken. It was either four or five years ago that this conversation took place, and the railroad was built many years before that.

J. L. HILL.

Fred. Townsend.

FREDERICK TOWNSEND called and sworn on behalf of complainants.

Questioned by WEATHERFORD:

Q. State your name, age, residence, and occupation.

A. Frederick Townsend; aged 51; I am manager of the Bank of British Columbia, Portland, Oregon.

289 Q. How long have you been manager of the British bank in Portland?

A. About thirteen years, on and off.

Q. Is there any other bank in the State of Oregon known as the Bank of British Columbia?

A. None.

Q. Are you acquainted with John A. Crawford and J. H. Foster?

A. Yes.

Q. Have they had business at your bank in the last few years?

A. Yes.

Q. State what paper, if any, in the way of notes you held against John A. Crawford and J. H. Foster on the 7th day of February, 1884, or for some little time prior thereto.

A. I held a note of J. H. Foster & Co. I forget whether it was jointly with John A. Crawford or whether John A. Crawford was endorser, but both names were on the paper for five thousand dollars. That note was due on the first of April, 1884, and was paid to me by Mr. John A. Crawford on the 16th of February of that year, before maturity, and the note was surrendered to Mr. Crawford. That note was really an extension of a previous transaction that was inaugurated on the 6th of September, 1883, a note then for $5,000, due on the 4th of November. On the 12th of November said note was again extended and fell due on the 2nd of January, 1884, and on the 9th of January it resolved itself into the note first mentioned.

Q. What other obligations did the bank hold against them, if any, at about that time—that is, Crawford and Foster?

A. None against Foster and Crawford.

Q. Were there any other notes left by Mr. Crawford, either John or William, in the bank as collateral security for moneys had or to be obtained given by J. H. Foster to either of the Crawfords?

A. No, sir; none.

290 Q. Had John A. or William Crawford ever endorsed any notes of that kind as collateral security and drawn money on them during the time that you have been cashier or manager of the bank?

(Objection by Flinn, for def'ts, as irrelevant, immaterial, and incompetent.)

A. Without referring to the bank books I may state from memory, so far as I can, that Mr. Crawford had indorsed before, in the same way as that previously described by me. Without referring to the bank books I am not able to state positively that such transactions were had, but I am inclined to think they were notes of J. H. Foster & Co. with John Crawford's name.

Q. Do you remember whether Foster or Crawford paid those notes?

A. I will say—I will almost state positively—that the notes were paid by Foster. The money was for his own benefit and the notes would naturally be paid by Foster in the course of business.

Q. What money, if any, did John A. Crawford obtain from the Bank of British Columbia between the first of February and the last of the same month in 1884?

A. Do you mean in connection with J. H. Foster & Co. or by himself?

Q. I mean speaking as to those dates.

A. Mr. Crawford has been in the habit of having business transactions with the Bank of British Columbia for many years past. I can't state positively without referring to the books whether — other notes with his name upon them that time.

Q. Did Mr. Crawford obtain a large amount of money from the bank of which you are the manager between the first and the last of that month in 1884, amounting to 20 or $30,000? If so, please state the amount.

(Objection by Flinn as irrelevant and immaterial.)

A. Do you mean in connection with J. H. Foster & Co.?

291 Q. No, sir; by himself.

(Objection same as above.)

A. Do you mean to say on other business transactions?

Q. No, sir; I have reference to money that he used in connection with the Foster affair.

A. In connection with Foster's business? No, sir; there was none obtained—not by Crawford.

Cross-examined by FLINN:

Q. Did James H. Foster & Co. pay to the Bank of British Columbia any note or notes that was left at the bank as collateral security by John or William Crawford?

A. No, sir.

Q. I mean notes executed by James H. Foster & Co. to Crawford or either of them.

A. There were none. The only notes that we held were those described in the first examination—that is, in connection with Mr. Crawford's name.

FRED'K TOWNSEND.

J. O. Goltra.

J. O. GOLTRA called and sworn on behalf of complainants.

Questioned by WEATHERFORD:

Q. State your name, age, residence, and occupation.
A. J. O. Goltra; aged 21; residence, Salem; occupation, student.
Q. Are you acquainted with John A. Crawford, of Albany, Oregon?
A. Yes.
Q. Are you acquainted with W. H. Goltra, in the same town?
A. Yes, sir.
Q. Did you hear a conversation between Mr. Crawford and W. H. Goltra in reference to a business transaction between J. H. Foster and John A. Crawford in Albany something like two years ago?
A. I did.
Q. You may state what the conversation was, so far as you know it.
A. The conversation was in reference to Mr. Foster's stor-
292 ing wheat for W. H. Goltra, and Mr. Crawford was asked by Mr. Goltra concerning a proposition that Mr. Foster had made to him. The proposition that Mr. Foster made was that the wheat was to be stored free of charge, and father asked Mr. Crawford concerning it—if it was all right—and he said that whatever agreement Mr. Foster made it was all right.
Q. Was that all the conversation you heard?
A. That was the only point discussed at that time; he also stated that Mr. Foster was all right if people understood him, and spoke as referring to his finances.
Q. Where did that conversation occur?
A. At the intersection of First and Baker streets, in Albany.
Q. Did you hear a conversation between the same two men afterward or before in reference to the same business?
A. No, sir.
Q. That was the only conversation you heard?
A. That was all.
Q. What was the date of that conversation?
A. About July, 1884. I could not say what time in the month, but I think in July.

J. O. GOLTRA.

As no more witnesses were present, court adjourned till nine o'clock to-morrow, November 11th, at the same place.

THURSDAY, *Nov.* 11*th.*

Court convened at the hour appointed, and the case proceeded.

Gu. Matasce.

GUSAEP MATASCO called and sworn on behalf of complainants.

Questioned by WEATHERFORD:

Q. State your name, age, residence, and occupation.

A. Gusaep Matasco; aged, 34; reside in Linn county, Oregon; occupation, farmer.

293 Q. Are you acquainted with J. H. Foster and John Crawford?

A. Yes.

Q. What business relations, if any, did you have with J. H. Foster during the time that he was running the Magnolia mills in Albany and the warehouse connected with it?

(Objection by Flinn, for def'ts, as irrelevant, immaterial, and incompetent, and as not stating any year or time.)

A. Yes, sir; I stored wheat there.

Q. Did you have wheat stored there in the fall of 1883?

(Objection by Flinn as irrelevant and incompetent.)

A. Yes, sir.

Q. Had you any wheat in the mill along about the sixth of Feb-uary, 1884, at the time that the property was transferred to Crawford by J. H. Foster?

(Objection by Flinn as immaterial and incompetent.)

A. Yes.

Q. How much?

A. Well, about something over 300 bushels.

Q. Did you call at the office or mill to see about your property?

A. Yes, sir.

Q. When?

A. I called some time the same week, about Friday, after the transfer of the property; and then I went back there every few days after that.

Q. Who did you find at the mill?

A. Mr. Foster and Bob Foster.

Q. Where did you find them?

A. At the mill, where they had been before.

Q. Did you notice any change?

A. I did not notice any change, only he said he had transferred all of his property to Crawford; but Bob Foster was doing business there for awhile, and Mr. Foster was there just the same.

Q. Did you have a conversation with J. H. Foster about that time in reference to the business transactions and as to why he

294 transferred the property to Crawford?

(Objection by Flinn as immaterial and incompetent.)

A. Yes, sir.

Q. Proceed and state what Foster said to you in that conversation.

(Objection same as above.)

A. He told me this: I told him I came down to see what he was going to do about that money he was owing me—about $400.00 outside of the wheat, and he said, I can't pay you now. He said he

transferred the property to Crawford to keep from breaking him up—to keep somebody from below from breaking him up, and he said he shipped about between 20 and 25,000 barrels of flour to England, part in two cargoes, and he said, "As soon as that flour gets there I can draw three dollars a barrel," and the rest he could get when they sold the flour; and he said, "When I get the three dollars a barrel," he said he would pay us right away. He said this: He said, "If you do not put me to any expense and let me run the mill in Crawford's name," he said he could run it. He said, Somebody below will break me up—will ruin me. He said, "I have got enough to pay every cent I owe if they will let me alone and not put me to any cost."

Q. When and where did that conversation occur?

A. It was in the week after the transfer—about a week, some time—in the office—in Mr. Foster's office.

Q. Was that the office that Mr. Foster had been in the habit of using—the mill office?

A. Yes, sir.

Q. Did you have other conversations with Mr. Foster in reference to this matter?

A. Oh, I asked him pretty often—every week or so; every time I came down I went in to see him. He told me every time, "I can do nothing now till I get the money."

295 Q. When you came down and went to the mill, who did you see around the office?

A. I saw Foster there all the time and once in awhile Crawford, and I saw him there before about the same. I saw him around the mill every once in awhile.

Q. How far did Mr. Crawford live from the mill?

A. Oh, about a hundred yards, maybe a little over; right up in the same yard.

Q. The next house to the warehouse?

A. Yes, sir.

Q. His barn is adjoining the warehouse?

A. Yes, sir.

Cross-examination by FLINN:

Q. Who was present when you had this conversation that you have related with Mr. Foster?

A. There was nobody there at that time, and then, just a little while, after talking a little bit Mr. Pearce came in; then he told me to go out a few minutes, and I went out and he locked the door, and then I waited awhile and then I never went in again that day. The way I know that he locked the door was that another man came and he could not get in.

Q. Did Mr. Pearce hear any of your conversation with Foster?

A. No, sir; as soon as Pearce came in Foster told me to go out. He said, "I have some business."

Q. Did any one hear any of those conversations which you say you had with Foster?

A. No; when there was anybody there he never wanted to speak

or say anything. He was always busy when I went there and I went back several times after that—for week after week I went to see about it.

296 Q. I did not ask you about that. I asked you about who was present; that is all.

A. No one was present.

Q. Did Mr. Foster tell you that he had received three dollars a barrel on the flour that was shipped to England, or that he would receive it?

A. He told me that he would receive it as soon as the flour was back to England, part of two cargoes.

Q. Did not he tell you that he received three dollars a barrel, and that he expected to receive enough more to pay off all his indebtedness?

A. No, sir; he never told me that. He said that he would receive three dollars a barrel.

Q. Are you sure he did not tell you that?

A. Yes; I am sure.

Q. Did Mr. Crawford hear any of those conversations?

A. No, sir.

Q. How many times did you see Mr. Crawford at the mill after the sale by Foster to him?

A. Oh, I could not tell. I saw him every once in awhile, pretty often, and then after awhile I never went around any more. Then if I ever went by there I saw him there; then, after I saw I could not get anything out of it, I never went around there; but when I went around I saw Crawford around the mill.

Q. Did you have any wheat in the mill at the time of the transfer to Crawford?

A. Yes, sir.

Q. Did you have a warehouse receipt for it?

A. Yes, sir.

Q. Did you get your pay for it?

A. Yes, sir; when I sold my wheat I got the pay for it. I told him I would not sell until I got the money.

Q. Foster owed you some money besides that you did not get pay for?

297 A. Yes, sir.

Redirect.

Redirect examination by WEATHERFORD:

Q. The Mr. Pearce that came to the mill at the time that Foster told you to go out and locked the door, what Pearce was it?

A. The Pearce that owns the ferry there.

Q. Ashby Pearce?

A. Yes, sir. He owns the ferry there.

Q. Is he the same man that Foster deeded some of his property to?

A. Yes, sir.

Q. Who did you sell your wheat to that you had in the warehouse?

A. I sold it to Mr. Foster.

Q. How long after the failure?

A. I don't know; maybe a month or a little over. Mr. Foster was in the office himself; nobody else.

Q. Did he pay you for it himself, or how?

A. Yes; he gave me a check on the bank.

Q. In whose name was the check?

A. In Mr. Crawford's name. I asked him why he did not give the check in his own name, and he said, "I have to do business in Mr. Crawford's name until I get everything settled up.

GUSAEP MATASCE.

W. C. Morgan.

W. C. MORGAN called and sworn on behalf of complainants.

Questioned by WEATHERFORD:

Q. State your name, age, residence, and occupation.

A. W. C. Morgan; aged 58; Albany, Oregon; a farmer.

Q. Are you acquainted with J. H. Foster and John A. Crawford, of Albany, Oregon?

A. Yes, sir.

Q. Did you do business with Mr. Foster during the time that he was running the Magnolia mills and warehouse, in Albany,
298 during the three or four years prior to the sixth of February, 1884?

A. Yes, sir.

Q. What business did you transact with him?

A. I stored wheat with him and sold it to him.

Q. Did you have wheat in the warehouse about the sixth of February, 1884?

A. Yes, sir.

Q. Do you know about the transfer of property from Foster to Crawford—you heard of it?

A. I heard of it; yes, sir.

Q. Did you call at the office to see about the wheat you had stored there shortly after the transfer?

A. I did.

Q. You may state what conversation you had there, and what was said.

Objection by Flinn, for def'ts, unless Crawford was present, as -material and incompepent.

(By FLINN:) Who was present during the day—at the conversation, I mean?

A. He was present at part of the conversation. I don't think Crawford was present just at the begin-ing of the conversation between Foster and myself, but I know he was there during the day and during part of the conversation.

Q. State what that conversation was.

Objection by Flinn to all that part of the conversation at which Mr. Crawford was not present as incompetent and irrelevant.

A. Well, when I went there, at the mill, Foster met me right on the steps to the office, and the first words that he spoke to me he said: "I suppose you know the fix I am in?" And I told him I had heard something about it, and me and him stepped around back into the wood-shed, back of the office; then he went back into the office, and I won't be sure but what Mr. Crawford was there, but I won't be certain; and I asked Mr. Foster about my wheat
299 stored there, or he mentioned it, I don't know which; and Mr. Foster advised me to sell it; rather insisted on me selling my wheat; and I did not give him much satisfaction whether I would sell my wheat or would not; finally I told him that I would sell down to a thousand bushels; I think I had between 1,300 and 1,400 bushels; and I told him I would sell down to a thousand bushels if I could get the money then, for I was needing it; and he spoke just like this: "I guess you can get the money." Said he, "I will give you my note, and Crawford will pay it off." Spoke rather low; did not want others in the office to hear, and he came up close to me and told me this, and he told me that Crawford would pay it off; and I asked him, Crawford, first, if that was his mill, and he told me it was; and I told him I had some wheat there, and if that was his mill and warehouse, why I wanted his receipt for my wheat; and he objected, Crawford objected, to giving me his receipt; he said that it was something that he had never done; spoke just those words: "It is something I have never done." And I wanted my wheat weighed out then, and he said: "I will see Foster about it." Well, I don't know as I said anything more to Crawford about it until, maybe, ten or fifteen minutes; and then he came to me, Crawford did, and told me he would give me his receipt for it, and then is when I sold Foster my wheat; I think it was 1,400 or 1,500 bushels, and I sold it down to a thousand bushels and Foster gave me his note; don't think I ever folded the note up; I think I held it in my hands, and in fifteen or twenty minutes Crawford came along and paid the note off and took it in.

Q. Do you remember when that conversation occur-ed—how long after the transfer?

A. It was two or three days after he made this assignment; I could not say.

300 Q. What did he say, if anything, about your wheat and the wheat being in the warehouse?

A. Well, Foster told me the wheat was there, and I asked Crawford about it, and he appeared not to know anything about it.

Q. He did not seem to know anything about it?

A. No; he did not appear to know anything about my wheat, and Foster wanted me to sell it—that is, he rather insisted on my selling it.

Q. How was the note signed that Foster gave you for the wheat?

A. Foster & Co. I think Mr. Foster's daughter wrote the note—I mean the first note.

Q. What was said, if anything, in that or a subsequent conversation about double storage on wheat, and by whom?

Objection by Flinn as irrelevant and incompetent.

A. I asked Mr. Foster if he was going to charge me any double storage. I think I spoke to him this way: "Are you going to charge me double storage on this wheat here?" And he said: "Oh, no." Said he: "I never did charge you double storage." And then I asked Mr. Crawford about it, and he said he did not know anything about it; he did not have any storage on it.

Q. When was that conversation?

A. I think it was just before harvest; I think I went down that day to get sacks to store my crop.

Q. What year?

A. I think it was the next harvest after the failure—just before harvest.

Q. Where did you see Mr. Foster at that time that you had the conversation?

A. I saw him in the mill office—the little brick office at
301 the mill and warehouse.

Q. Was he behind the desk where the——

A. Well, I would not say that he was behind the desk; he was there in the office, but at his table or desk or not I would not say.

Q. Who else was in there at the time?

A. Well, I think, as well as I recollect, Mr. Gray was in there. I told him I had come to see about sacks.

Q. What did Mr. Foster say to you about selling the mill, and when?

(Objection by Flinn as immaterial and incompetent and irrel-vant.)

A. He told me this: When I told him that I wanted to see about getting sacks of him I told him that I wanted to store there provided there would be no storage on the wheat that remained there, and if he was going to charge me second storage, why, I would not store there, and he said: "I charge no second storage, and you can get all the sacks you want." And he spoke like this: "I am going to run it," or I won't be certain but he said "we." He said: "I am going to run it" or "we are going to run it and make all we can out of it."

Q. What effect did that have upon you in inducing you to store your wheat there at that warehouse and mill?

(Objection by Flinn as immaterial, irrevelant, and incompetent.)

A. I stored with him more readily, thinking maybe that would be some means of enabling him to help pay up those back debts that he was owing.

Q. Was he owing you any at that time; if so, how much?

A. He was owing. I had his note for a thousand dollars; had been owing me for I don't know how long; note calling for either nine or ten per cent.; I don't know which.

Q. Has it been paid?

(Objection by Flinn, same as last ab-ve.)

302 A. The note called for $1,400 when it was given, and as well as I recollect he paid $400 on it. I think the remainder

of the note was a thousand dollars. The face of the note calls for $1,400, as well as I recollect, and I think he paid $400 on it. I won't say how long it was after the note was given; I don't recollect what day I did receive the $400.

Q. Was that $400 paid before or after the transfer of the mill to Crawford?

A. It was paid before, as well as I recollect, the note was.

Q. Of whom did you get sacks in 1884?

A. I got them of Foster—that is, I won't say that he handed the sacks to me, but I got his consent for the sacks. I won't say he handed out the sacks. It might have been him or it might not. I don't recollect who did.

Cross-Examination.

Cross-examination by FLINN:

Q. How much of that first conversation did Mr. Crawford hear—the first conversation that you testified to?

A. Well, I think, as well as I recollect, when me and Mr. Foster went back into the office there, as well as I recollect, Mr. Crawford was there. When Mr. Foster was insisting on me selling my wheat, and I rather objected to selling any of my wheat—I did not like the price, you know—and I did not consent readily to sell my wheat or any of it. I think that was about the first time I recollect of seeing Mr. Crawford there.

Q. Did you ask Mr. Foster's advice as to whether you better sell or not?

A. No; I did not ask him that; I asked him why he thought I better sell.

Q. What did he say?

303 A. Well, I believe, as well as I recollect, he said he thought wheat would come down from what it was then. I think wheat was selling then at 78 cents, and I think I got that for my wheat that day when I sold.

Q. Was Mr. Crawford present when you consented to sell your wheat, and did he hear Foster say that Crawford would pay the note?

A. Well, I rather think that there was nobody heard Foster say those words, because he spoke in a rather low tone of voice, as he did not want any one to hear but me.

Q. Was he in the office?

A. Yes; he was in the office.

Q. The office is a small one, is it not?

A. Yes; it is a small office, but Crawford was in the office.

Q. What did Crawford say when he paid the note, or how did he come to pay it?

A. Well, Foster said just as I told you, and he said, "Crawford will pay off the note." And I was sitting in a chair like this, and he walked up to me and kind of spoke in a low tone of voice and said, Crawford will pay off the note, and his son Robert made the note out.

Q. I did not ask that. I asked how he came to pay it.

A. Well, I don't know how he came to pay it. I don't think I ever folded the note up. It was not over fifteen or twenty minutes.

Q. Did you ask him for the money?

A. I don't know; just brought the money and paid me.

Q. Did he look at the note before he went and got the money to see the amount of it?

A. I could not say whether he did or not.

Q. Did any one in your presence or hearing tell Mr. Crawford the amount of the note?

A. I don't know what Foster told him. I did not tell him the amount.

304 Q. Did you hear him tell him?

A. I did not. He was there when the note was made out. I don't know whether he saw it or not.

Q. Did he help to figure it up—the amount of the note?

A. I could not say. I don't think he did. Foster's son figured it out and made the note out.

Q. Do you know whether he heard any of the conversation or not?

A. I don't. I tell it as I heard it.

Q. But after the sale was made Crawford brought the money in twenty or thirty minutes?

A. Yes, sir.

Q. Did Crawford leave the office?

A. Yes; Crawford left the office. I don't know whether he went somewhere and got the money or not. He just left the office and came back. I had not folded the note at all, because the understanding was that Crawford would pay it off.

Q. Did you understand when you sold the wheat that Crawford would pay it off?

A. Well, Foster said so, and that is why I staid to get the money, and I did get the money before I left the office.

Q. Did you pay any second storage on the wheat?

A. I never did. Mr. Foster never charged me second storage.

Q. Did you understand when you got the sacks there the next year whether Foster was negotiating for himself or Mr. Crawford?

A. I did not know whether he was for himself or Crawford.

Q. Whose warehouse receipt did you get when you stored that season?

A. Crawford's name was on it; took checks when they weighed the wheat out.

Q. Did you give a receipt for the sacks?

305 A. No, sir; I never gave receipts for any sacks that I ever got in my life. I never did.

Q. Did you understand that you were storing wheat with Foster or Crawford the year after the failure?

A. Well, as I hauled in the wheat and got checks for it I understood that I was storing with Crawford, but I thought at the time that I got the sacks the understanding was that I am storing with both; but at the time I hauled in the wheat and got my checks I

understand that I am storing with Crawford because I got the wheat checks in his name.

Q. Under the circumstances would you have stored with Foster?

A. I don't know that I would and I don't know but I would.

Q. You are not sure about that?

A. No, sir; I am not sure about that. I don't know but I would. I had stored with him for about fifteen or twenty years before that; ever since I have been in Oregon, with the exception of two. I have been here twenty-two years.

Redirect.

Redirect examination:

Q. I understood you to say that Foster's daughter wrote the note.

A. Understand me this way: Foster's daughter wrote out the note that I had against Foster at the time that I sold my wheat to him, and then, when I made the sale of the 400 bushels of wheat to him, why his son Robert wrote out that note. Robert wrote the last note; his daughter wrote the first one.

Recross.

Recross-examination:

Q. Was Mr. Crawford present when Mr. Foster said "I" or "we will run the mill"?

A. I don't hardly think that Crawford was present. He might have been. I don't think that Crawford was present, because I don't recollect of having any conversation with him until about
306 the sacks. Foster agreed to furnish the sacks and did not furnish the sacks. I don't hardly think that Crawford was there, because I don't recollect of talking with him about the sacks.

W. C. MORGAN.

Here court took a recess till two o'clock.

Court convened at the hour appointed, and the case proceeded.

R. W. Thompson.

REGINALD W. THOMPSON called and sworn on behalf of complainants.

Questioned by WEATHERFORD:

Q. State your name, age, residence, and occupation.

A. Reginald W. Thompson; aged 22; residence, East Portland; occupation, clerk.

(Here a paper was handed to witness.)

Q. Examine that paper, and state, if you know, whose signatures as witnesses are attached to it.

A. Yes, sir.

Q. Just give their names.

A. F. W. Reynolds and Reginald W. Thompson—that's myself.

Q. Did you see that instrument executed?
A. I did.
Q. And the names signed thereto, purporting to have been signed by William Sibson, E. Quackenbush, and S. Farrel?
A. Yes; I saw them sign it.

Here the instrument above mentioned was offered in evidence for complainant; it is dated June 11th, 1886.
Objection by Flinn, for def'ts, as incompetent, irrelevant, and immaterial. The instrument was received in evidence and marked by the master "Complainant's Exhibit A."

Q. Was that inst-ument executed at the time it bears date?
A. It was.

Cross-examination by FLINN:

Q. To whom was this instrument marked "Exhibit A"
307 delivered at the time it was executed?
A. I don't know as I understand the question.

Question read to witness again.

A. (Witness consults the instrument.) Well, I don't know to whom it was delivered. I did not deliver it.
Q. What was done with it after it was executed, signed by Sibson, Quackenbush, and Farrel?

Objection by Weatherford as immaterial, irrelevant, and not cross-examination.

A. I just simply witnessed the signatures; that is all. I suppose Mr. Sibson disposed of it afterward; that is all I know.
Q. Who was present besides the witnesses and the parties who signed it, if any one?
A. I don't recollect.
Q. Where was it signed?
A. Signed in the office of Sibson, Quackenbush & Co.; that is as near as I remember.
Q. In Portland, Oregon?
A. Yes, sir.
Q. Was Charles A. Neal there?

Objection by C. A. Wood, for complainants, as immaterial.

A. I believe not.
Q. Was any other person there except those who signed this instrument?

Objection same as above.

A. That I don't remember.
Q. Do you recollect the time of day it was when you signed it?
A. No, sir; I don't recollect exactly.
Q. Were you clerking for Sibson, Quackenbush & Co. at that time?
A. I was.

Q. Are you still in their employ?
A. Yes, sir.
Q. Do you know Charles A. Neal?
308 (Objection same as above.)
A. No; I am not acquainted with him.
Q. Have you ever seen him to your knowledge?
(Objection same as above.)
A. Not that I know of.
Q. Do you know whether anything was paid by Charles A. Neal for this instrument?
(Objection same as above and as not cross-examination.)
A. No; I don't.
Q. Did you see any money paid or do you know of any being paid at the time this was signed or at any other time?
(Objection same as above.)
A. No; I don't.
Q. Have you ever seen this instrument since it was signed by you as a witness until the present time?
A. I believe not.
(Objection to last question as immeterial and not cross-examination.)
Q. Do you know in whose custody it has been?
(Objection same as above.)
A. No; I do not.

REGINALD W. THOMPSON.

T. J. Armstrong.

T. J. ARMSTRONG called and sworn on behalf of complainants.

Questions by WEATHERFORD:

State your name, age, residence, and occupation.
A. My name is T. J. Armstrong; aged 30 years; residence, Portland; occupation, book-keeper and cashier.
Q. You may look at this instrument of writing and state if you know whose name that is and who wrote it there. (Papers shown to witness.)
309 A. My name. I wrote it there.
Q. Did you write it there as a witness to the signatures?
A. Yes; as a witness to those names there.
Q. You may state — signed that instrument, dated the 19th day of June, 1886.
A. W. C. Noon, T. F. Osborne. Then he signed for G. H. Bryant and S. A. Neville and C. M. Osborne. Those are the parties in the San Francisco house and are represented by T. F. Osborne here.
Q. By here you mean in Portland?

A. Yes, sir; here in Portland.
Q. Those names constitute what firm, if you know?

(Objection by Flinn because the record or contract of their partnership is the best evidence.)

A. The same names that are on that are the partnership.
Q. Doing business where?
A. In Portland, Oregon, under the firm and style of W. C. Noon & Co.

Here the paper above referred to, purporting to be an assignment of a judgment rendered of a case wherein W. C. Noon & Co. were plaintiffs against J. H. Foster, on the 8th day of March, 1886, for the sum of $1,904.65 and costs, which instrument is dated the 19th day of June, 1886, is offered in evidence by complainants.

Objection by Flinn, for def'ts, as not competent, immaterial, and irrelevant, and it purports to have been executed by an attorney-in-fact as to G. H. Briant, S. A. Neville, and C. M. Osborne without any authority or power of attorney being shown.

The instrument was received in evidence and a certified copy thereof made by the master and marked "Complainant's Exhibit B," and filed in lieu of the original, and the same was also done with Exhibit "A," previously offered.

Cross-examination by FLINN:

310 Q. Were you present when Exhibit "B" was written or printed?
A. No, sir.
Q. Was Charles A. Neal present when it was executed?

(Objection by Wood as incompetent, irrelevant, and immaterial.)

A. There was an agent there, but I am not positive whether it was Mr. Neal or not; I could not swear positive, but presume it was him.
Q. Do you know Charles A. Neal?
A. Not personally.
Q. Do you know whether you ever saw him or not?

(Objection by Woods, same as above.)

A. Well, if that was the same man in the office at that time.
Q. What knowledge have you of ever seeing Charles A. Neal?

(Objection same as above.)

A. If that was Mr. Neal that was in the office at that time; that is the only means I have of knowing him.
Q. Why do you say that was Mr. Neal?

(Objection same as above.)

A. Why, he came there, I presume, about that agreement.
Q. Was he introduced to you as Mr. Neal?

(Objection same as above.)

A. I don't remember about that.
Q. Did you hear any one call him that—Charles A. Neal?
(Same objection.)
A. I don't remember.
Q. Has any one told you that that was Charles A. Neal?
(Objection same as above.)
A. I don't remember about that.
Q. Was this paper delivered to the gentleman whom you
311 say was Charles A. Neal at the time it was executed?
(Objection same as above.)
A. I presume it was, but not to my knowledge; not in my presence, anyway.
Q. Why do you presume it was?
(Same objection.)
A. Why, because it belonged to him; I suppose the instrument belonged to him.
Q. You mean to say that it belonged to the man who was in the office at the time, whether it was Neal or not?
(Same objection.)
A. I presume it was handed to the man in the office; whether it was Charles A. Neal or not I could not say, of my own knowledge.
Question read again to witness.
A. No; I don't mean to say that, because I don't know whether it was or not.
Q. You have no personal knowledge whether the person was Charles A. Neal or not, do you?
(Objection same as above.)
A. I have no personal knowledge; I don't remember whether it was or not, but presume it was.
Q. Were you then in the employ of Noon & Co.?
(Objection same as above.)
A. Yes, sir.
Q. Are you still?
(Same objection.)
A. Yes, sir.
Q. Was there anything paid to Noon & Co. by Mr. Neal or any one?
(Objection same as above.)
312 A. Not to my knowledge.
Q. Have you ever seen this instrument since you signed it as a witness?
(Objection same as above.)

A. Not till I came into this room to-day.
Q. Do you know where it was kept?

(Same as above.)

A. No, sir.
Q. Was there any one else present besides the gentleman you speak of when you signed it?
A. I don't think so.
Q. What was done with the instrument after it was executed?

(Same objection.)

A. I thought I answered that a few minutes ago.
Q. Please answer again what was done with it. I want your knowledge of it.
A. I can't say whether it was delivered in my presence or not.
Q. Where did you see it last?
A. In the office of W. C. Noon & Co.
Q. Where was it?
A. On the desk.
Q. That was the last time you saw it?
A. To my knowledge, yes.
Q. Was there anything said in your presence by Mr. Osborne or Mr. Noon or those other gentlemen present?

(Same objection.)

A. I don't recollect now. I have no knowledge of anything else said.

Redirect.

Redirect examination by WOOD, for complainant:

Q. What is your position with W. C. Noon & Co.?
313 A. Book-keeper and cashier.
Q. If this paper had remained in their possession would you have known of it?
A. Not necessarily.
Q. Do you know anything about what consideration passed between Mr. Neal and W. C. Noon & Co. on this instrument?
A. No; I can't call to mind now.
Q. Well, I see you answered on cross-examination that you did not know of any consideration having passed. Now, I say, do you know whether any did or not?
A. Well, I can't call to mind whether there was or not.

Recross.

Recross-examination by FLINN:

Q. Are you their general book-keeper and were you at that time?
A. I am; yes, I was.
Q. Do you keep account of all their general transactions?
A. Yes.
Q. What entry did you make on the books of Noon & Co. as to

any consideration being received for that paper marked Exhibit "B"?

(Objection by Wood, as incompetent, irrelevant, and immaterial.)

A. I can't call to mind now of any entry being made.

Q. Was there any memorandum on the books of the company as to that transaction—the sale or transfer of that judgment Ex. "B"?

(Objection by Wood, same as above.)

A. I did not make any.

Q. Do you know of any being made?

(Same objection.)

A. Not to my knowledge.

T. J. ARMSTRONG.

314 Here, no more witnesses being present, court adjourned till to-morrow.

Friday morning, Nov. 12th, at half past ten, at the same place, court convened at the hour appointed and the case proceeded.

E. T. T. Fisher.

E. T. T. FISHER called and sworn on behalf of complainants.

Questions by WOLVERTON, for complainants:

Q. State your neme, age, residence, and occupation.

A. E. T. T. Fisher; aged 51; residence, near Miller's station, Linn Co., Oregon; farming and surveying.

Q. Mr. Fisher, were you a member of the grand jury at the March term of the circuit court for Linn county in 1882?

A. I was.

Q. State what position you held on that grand jury.

(Objection by Flinn as immaterial, irrelevant, and incompetent.)

A. I was foreman of the grand jury.

Q. State what proceedings were being had before the grand jury as against Mr. John A. Crawford.

(Objection by Flinn, same as above.)

A. The grand jury were investigating a case of perjury, bringing an indictment against Mr. Crawford for bribery.

Q. If Mr. Crawford came before the grand jury state what explanation he made in regard to the proceedings then before the grand jury.

(Objection by Flinn, same as above.)

A. We had been calling witnesses from outside that owed Mr. Crawford, and he made statements relating to those debts that were coming to him.

Q. If he made any statement with regard to what Mr. J. H. Foster owed to him at that time please state what it was.

315 (Objection by Flinn, same as above.)

A. He stated that Mr. Foster did not owe him.

Q. You will please give the conversation between yourself and Mr. Crawford at that time with regard to Foster's indebtedness to him.

(Objection same as above.)

A. I asked if Mr. Foster did not owe him for property there to be taxed for taxable property; if he did not owe him.

Q. What was Mr. Crawford's answer to your interrogatory?

A. He said he did not owe him.

Q. Did you ask him with regard to any particular indebtedness of Mr. Foster to Mr. Crawford?

(Objection same as above and also as leading.)

A. No particular indebtedness. We had heard remarks reported that Mr. Foster owed Mr. Crawford, and we just made a general question as to whether he owed him or not.

Q. And what was Mr. Crawford's answer to that?

A. Mr. Crawford said he did not.

Q. Did you do the interrogating for the grand jury?

(Objection by Flinn, same as above.)

A. Yes, sir; I asked most of the questions. After I would get done asking what questions I thought were proper any of the jurors would inquire, and I think several did ask Mr. Crawford other questions.

Q. What was the purport of the other questions asked Mr. Crawford with regard to this matter?

(Objection by Flinn, same as above.)

Fisher X.

Cross-examination by FLINN, for def'ts:

316 Q. Have you repeated the exact language you used to Mr. Crawford when you asked him the questions?

A. I can't tell whether I repeated the exact language or not; the idea was whether there was any more property.

Q. I did not ask whether there was any more property. Just answer the simple question, whether it was the exact language or not. Have you given the language you used, as near as you remember?

A. I have, as near as I remember it.

Q. Have you given Mr. Crawford's language, as near as you remember it, in reply to your questions?

A. I have, as near as I remember it.

Q. Your question, in substance, was whether Mr. Foster owed Crawford for any property that was taxable, as I understood it.

A. No; it was—we asked the question whether he owed him or not.

Q. Then you did not say anything about as to whether it was taxable or not?

A. I do not think I did as to whether it was taxable or not.

Q. Did you not so state in your direct examination that you did ask him such a question?

A. I do not think that was the way I stated it.

Q. If you did so state it you are mistaken, are you?

A. If I did so state it I am mistaken, as we wanted to find out——

Q. I did not ask you what you wanted.

(By WOLVERTON:) He has a right to explain.

Q. He stated what the grand jury wanted at the beginning. Do you remember what took place in the grand jury room any better than what you have testified to this morning?

A. No; I suppose not.

Q. Then you are not sure that you asked Mr. Crawford the question that you have repeated, are you?

317 A. Well, I am sure that we asked him the question.

Q. The question you first testified to or the second?

A. That is the first question that I testified to.

Q. You are sure of that, are you?

A. I am sure of it.

Q. Did Mr. Crawford make any explanation or attempt to make any explanation as to his relation with Mr. Foster with regard to any indebtedness or claims or counter-claims between them?

A. In that claim I do not recollect that he did now. Some claims he did attempt to explain about.

Q. Well, I am asking about this claim, not about other matters. Do you remember whether he did or not?

A. Well, I do not remember whether he did try to make any explanation.

Redirect.

Redirect examination:

Q. State whether or not Mr. John A. Crawford was under oath at the time he made answer to those interrogatories.

Objection by Flinn as incompetent, irrevevent, immeterial.

A. I think he was.

Q. State what the charge was about that you were then investigating.

Objection by Flinn, same as above.

A. The charge was that he had not given in all of his property to the assessor when he was giving in his taxable property.

Fisher Re-X.

Recross-examination:

Q. The court dismissed the charge, did he not?

A. I understood it was dismissed—the indictment.

E. T. T. FISHER.

J. A. Crawford.

Defendant J. A. CRAWFORD called and sworn on behalf or complainants:

Questions by WEATHERFORD:

Q. State your name, age, residence, and occupation.

A. John A. Crawford; aged 71; residence, Albany; occupation, miller.

318 Q. Mr. Crawford, did you make an application to the board of county commissioners for Linn county, Oregon, some time in March, 1883, to reduce your taxes, and support the application by an affidavit on the 6th of March, 1883, before Geo. E. Chamberlain, notary public for Oregon?

(Objection by Flinn because if there is such an affidavit it should be shown to the witness and his attention called to it before he is required to answer, and asks for a ruling of the master on this objection.) The master rules that it may be answered and the final ruling will be made on hearing the argument in the case.

A. Well, I don't distinctly recollect about it; I may have, but I can't think of it at present whether I did or not.

Here a paper is shown to witness purporting to have been signed by J. A. Crawford, dated the 6th day of March, 1883, and he is asked to state if it is his signature and if he executed that instrument.

A. It looks like it.

Q. Did you execute that instrument?

A. It looks like my handwriting; I have no recollection of whether I did or not; it looks like my handwriting.

Q. Is it not a fact that you employed Mr. Chamberlin to write that affidavit for you?

A. I may have, but I don't recollect it now.

Q. Did not you also testify before Judge Boise, in the case pending before him at the June term of the circuit court for Linn county wherein Mr. W. H. Galtra was plaintiff and yourself and J. H. Foster were defendants, that you executed that instrument, or words to that effect?

Objection by Flinn as immaterial, irrelevant, and incompetent.

A. I may have, but I don't recollect whether this is it or not.

319 Q. What do you say as to that signature being your signature or not?

A. It looks like mine.

Here the master is requested by counsel for complainants to make a certified copy of the said instrument and receive it in evidence on behalf of complainants in lieu of the original, because said original belongs to the records of court in Linn county.

(Objection by Flinn, for def'ts, first, because it is not properly identified; second, as irrelevant, immaterial, and incompetent.)

The instrument is allowed in evidence, and the certified copy is marked "Complainant's Exhibit C."

Here a verified statement of the assessable property of John A. Crawford in the county of Linn, State of Oregon, made for the assessor of Linn county in the year 188–, purporting to have been signed and sworn to before H. S. Williams, county assessor, on the 24th day of September, 1881, and the witness is asked if that is his signature attached to the affidavit on said paper.

(Objection by Flinn as immaterial, irrelevant, and incompetent.)

A. It is my name, but I don't know as I ever wrote that.

Q. Is not that your signature?

(Objection same as above.)

A. It is my name, but I don't know whether it is my signature or not.

Q. Is it not your handwriting?

A. It looks like it some; whether it is mine or not I cannot exactly state.

Q. Look at the signature to the affidavit on the back of this paper, where you deducted the indebtedness, and see if that is your handwriting, and were the words "J. A. Crawford" written by you?

(Objection same as above.)

A. It looks like my name and handwriting too, but I don't recollect.

320 (Here the paper last above named is offered in evidence by counsel for complainants and the master requested to make a certified copy of the same, for like reasons as in the former case, and to mark the copy filed in evidence Complainant's Exhibit "D.")

Objection by Flinn to said paper being received in evidence because it has not been properly identified and as irrelevant, incompetent, and immaterial; also objects to the master making certified copies of both papers for the purpose of filing the same in evidence until said papers are properly identified and beyond question as having been executed by Mr. Crawford, because his signatures as to this particular would be an important element before the court.

(Here the witness is shown a paper which purports to be a verified statement of the assessable property of William Crawford in Linn county, Oregon, made for the assessor of said county for the year 1881, and he is asked to look at the name subscribed to the affidavit and state whether he knows the handwriting of the signature to that affidavit.)

A. I don't think I do.

J. A. CRAWFORD.

Here court took a recess till four o'clock p. m.

Court convenes at the hour appointed and the case proceeded.

Montieth.

THOS. MONTIETH called and sworn on behalf of complainants.

Questions by WEATHERFORD:

Q. State your name, age, residence, and occupation.

A. Thomas Montieth; aged 62 and past; residence, Albany, Linn Co., Oregon. I don't know hardly how to describe my occupation. I may be a loafer. I have no occupation at present. That is all there is of it.

Q. Were you engaged in the milling business in Albany a few years ago? If so, up to what time?

A. Yes, sir; up to about some time in the year of 1884. I
321 can't tell exactly.

Q. Are you acquainted with J. H. Foster and John A. Crawford?

A. I am.

Q. Do you remember about the time that the property known as the Magnolia mills and warehouse and other property was transferred by Foster to John A. Crawford?

A. Yes, sir; I remember that.

Q. Did you have a conversation with Mr. Crawford, some time shortly after the transfer was made, in reference to business transactions between him and Foster?

A. Yes, sir.

Q. Please state what was said in reference to it, and, as near as you can, when and where the conversation occurred.

A. Well, I think it was about—maybe twelve months ago. We got to speaking about business, about milling business, or the transfer, rather. You asked me about the transfer. Well, we met between my office and the mill one day; somewhere about there. We got to talking about it. Mr. Crawford said to me, "If you had deeded your property to me, Crawford, as Foster did," he would have brought me out all right, as he would Foster.

Q. What was said in that conversation, if anything, about Foster owing him money?

Objection by Whaly, for defendants, as incompetent, irrelevant, and immaterial.

A. Nothing at that time.

Q. Did you have a conversation with him in which that matter was subsequently spoken of and discussed?

Objection, same as above.

A. Yes, sir.

Q. Please state what he said in that conversation in reference to it.

A. That conversation was about the latter part of 1883.
322 Mr. Crawford came along somewhere about the mill and asked me how I was getting along, and I told him, Pretty rough; I was losing money. Well, Crawford said, "Foster seems to be getting along first rate and making money."

Q. Was there anything more said in that conversation?

A. Well, as I said, I believe he stated that Foster seemed to be getting along and making money. Well, I said, "if he is getting along so fast, why don't he pay off the mortgage that has been on record there ever since he bought the mill." "Why," he said, "that mortgage was paid off long ago."

Cross-examination by WHALEY:

Q. Were you a witness, Mr. Monteith, in the case of Goltra against the present defendants?

A. I was.

Q. Did you, when you were a witness then, testify to the same statements of facts as you do now?

A. Nothing of the kind.

Q. You were on friendly relations with Crawford at the time, were you not—at the time you testified?

A. Yes, sir.

Q. Has there not been an unpleasantness between you since that time?

A. No; not that I know of. He has done me favors that I will never forget him for.

Q. Did you not, in a conversation in Mr. Crawford's office or in your office at Albany, about a month ago, state to Mr. Crawford himself that you heard that it was reported that he was a member of a syndicate that had assisted in robbing you of your property, or something like that?

Objection by Weatherford as immaterial, irrelevant, and not cross-examination.

A. I don't think I told him "robbing." I did say that I
323 heard he was one of a number of a syndicate that had bought my property. That is as near as I recollect.

Q. Did you have any feeling against him at that time, when you told him that?

A. I did not; because he told me he did not know anything about it.

Q. Who was present, besides yourself and Mr. Crawford, in this conversation in 1883 which you have testified to?

A. I don't think anybody; I don't think any one; just talking about the milling business.

Q. Was any one present besides you and Mr. Crawford in this conversation which took place in 1884?

A. The latter part of 1883, I think I said—I think I did.

Q. How many conversations did you testify to in your direct examination, sir?

A. I testified to two.

Q. When did the first one testified to take place?

A. About twelve months ago.

Q. When did the other one take place?

A. The latter part of 1883, I believe.

Q. What period of time intervened between the conversations to which you have testified?

A. I have no pencil to figure the different dates.

(By WHALEY:) There is a pencil, figure it out.

(WITNESS:) I don't wish to be — at all; I don't wish to be using the court with any dishonor, but there is the two dates, figure it out yourself. There is the latter part of 1883, and the other was about twelve months ago. I suppose that is all to be stated.

Q. Is that as near as you can fix the time that intervened between the two conversations?

A. I don't know how a person could get any nearer it.

324 Q. Did those conversations take place within a month of each other or within a year of each other?

A. 1888. The latter part of 1883 and twelve months ago the other.

Q. That is not an answer to my question, sir.

A. Well, sir, that is all the answer I have got to give you and I can understand that part of it.

Q. Then you can't answer my question any more definitely than you have done, can you?

A. Give me a pencil and I will.

Q. Here is a pencil. (Witness offered a pencil.)

A. Well, the counsel can figure it yourself. One was the latter part of 1883 and the other was about twelve months ago. Now, put that down; that is my answer.

Q. I ask if you have now stated, as definitely as you can, the period of time between the two conversations to which you have testified.

A. I have, sir, as well as I can. No rational man can state the time between the two any more definitely.

Redirect examination:

Q. Is it not a fact, Mr. Monteith, that in your testimony in the case of Goltra *vs.* Foster and others you were called by Mr. Crawford and asked only in reference to the value of certain property?

A. Yes, sir.

(By WOODS, for complainants:)

Q. Were you at the former trial examined upon these same points?

A. That I have been to-day? No, sir; I was asked only as to the value of the mill and the grounds.

THOS. MONTEITH.

Here court adjourned to meet at such time and place as may be fixed upon by the master.

325 ALBANY, OR., *Dec.* 30, '86.

By consent of parties the deposition of Geo. E. Chamberlain is taken at this time and place on behalf of complainant-in-chief to be inserted in complainant's testimony-in-chief.

Geo. E. Chamberlain.

GEO. E. CHAMBERLAIN, called as a witness for complainant and duly sworn, testifies:

My name is Geo. E. Chamberlain; residence, Albany, Oregon; age, 32; occupation, banker, formerly lawyer.

(Exhibit C is here shown witness.)

This paper was executed by John A. Crawford. I wrote the body of that instrument at John A. Crawford's request. Mr. Crawford had had trouble with his assessments, and desiring to correct his assessment of 1882 came to me and stated that his assessment was too large; that various parties owed him upon which they had agreed to pay the taxes, and he desired an affidavit prepared to reduce his assessment. I advised him that the law did not contemplate that the same property should be taxed twice, but told him it would be best before making the affidavit he desired to have some one examine the assessment lists for that year to assure himself that the parties who had agreed to pay the taxes on amounts they owed him were living up to their agreement. To this end he employed Mr. O. H. Irvine to make the examination referred to. This was done. The names of the parties who had taken out their indebtedness to him were reported to Mr. Crawford, and to the aggregate amount thus reported was added certain other notes and accounts owned by Mr. Crawford, some of which was in my possession, and upon the whole, $13,500, as I now remember, was placed at a fair valuation. I do not think the indebtedness of Foster (James H.) to Mr. Crawford was included in that estimate of $13,500. That estimate was arrived at, as I have before stated, in my testimony.

Said instrument is here offered in evidence by the complain-
326 ant, and the master is requested to make a certified copy of the same in lieu of the original, as it is on original file of Linn county. Said copy is made and marked Complainant's Ex. "C."

(All the foregoing testimony is objected to as incompetent and immaterial by the def't.)

GEO. E. CHAMBERLAIN.

GEO. H. DURHAM, *Master.*

327 DEC. 14, 1886.

Pursuant to appointment by the master, court convened at the office of Wolverton & Irvine, in Albany, Linn Co., at the hour of 9.30 a. m., complainants appearing by *their* attorneys, J. K. Weatherford and C. E. Wolverton, and the defendants by their attorneys, L. Flinn, and the case proceeded.

H. Bryant.

H. BRYANT called and sworn on behalf of complainant.

Questioned by WEATHERFORD:

Q. State your name, age, residence, and occupation.

A. H. Bryant; aged 38; residence, Albany, Oregon; occupation, attorney.

Q. Are you acquainted with John A. Crawford, of Albany, Oregon?

A. I am.

Q. What position, if any, did you hold in Linn county, Oregon, in 1881?

A. I assessed the city of Albany for the county assessor.

Q. Among those whom you assessed was John A. Crawford one?

(Objection by Flinn as immaterial, irrelevant, and incompetent.)

A. He never swore to any statement to me of the list of his property. I went to him for a list and my recollection is that we made out a list, but he never swore to it before me, I being only a notary public.

(Objection by Flinn to the answer because not responsive to the question, and as it is a voluntary statement of the witness concerning that of which he was not asked.)

Q. Did you have a conversation with him in reference to his notes and accounts at that time? If so, state what he said in reference to the same.

(Objection by Flinn as immaterial, irrelevant, and incompetent.)

328 A. I had a conversation the year that I made the assessment, but I might state here that just the year I don't remember, but it was the year I made the assessment. He told me the aggregate of his accounts was $5,500 of money, notes, and accounts.

Cross-examination by FLINN:

Q. What authority did you have to make that assessment for the assessor of Linn county?

A. I think I had perhaps no legal authority, only it has been customary for the county assessor to appoint some one to help them, as it is impossible for one man to do the work.

Q. Then you undertook to make assessments without any legal authority, and to make parties believe that you had legal authority, did you?

A. I don't think I ever tried to make parties believe that I had authority; in fact, the reason I did not swear Mr. Crawford to his assessment was because I did not think I had authority to do it.

Q. Do you mean to say or to be understood that you did not represent to parties you assessed that you were making the assessment and that it was legal after it had been done in that way?

A. I did not to John Crawford. Other parties I think I swore to it, as notary public, as had been the custom in the county when parties acted in the capacity of what they call deputies. I don't think there was any law for appointing deputies.

Q. Did you not know at the time that you were going around and making the assessment that there was no law authorizing the assessor to appoint a deputy, and that, in fact, you were a volunteer in the matter without authority, but paid by the county assessor?

A. I think that is substantially correct. I had understood that.

329 *Redirect.*

Redirect examination:

Q. You were employed by the county assessor to assess the precinct of Albany at that time, were you not?

A. I was.

Q. When it became necessary to swear a person to his assessment you swore him, as notary public, did you?

(Objection by Flinn as immaterial, irrelevant, and incompetent.)

A. I commonly did, but in this case I wanted the assessor himself to do the swearing.

H. BRYANT.

H. S. Williams.

H. S. WILLIAMS called and sworn on behalf of complainant.

Questioned by WEATHERFORD:

Q. State your name, age, residence, and occupation.

A. H. S. Williams; aged 50; residence, eight miles northeast of Scio, or about that, in Linn county, Oregon; occupation, farmer.

Q. What official position, if any, did you hold in the year 1881?

A. I was county assessor.

Q. As such assessor did you during that year assess John A. Crawford?

A. I did.

(Here what purports to be a verified statement of the assessable property of John A. Crawford, heretofore marked "Complainant's Ex. D," is shown to witness.)

Q. State whether or not that is the statement of the assessable property givin in by John A. Crawford in the year of 1881.

A. It is.

Q. State who signed the name "John A. Crawford" to the
330 affidavit on the first page of that statement.

A. John A. Crawford signed it himself.

Q. In your presence?

A. In my presence.

Q. Did you swear him to it at that time?
A. I did.
Q. What was said, if anything, by John A. Crawford as to the amount of notes, money, and accounts that he owned that were assessable?

(Objection by Flinn as irrelevant, immaterial, and incompetent, and if it was reduced to writing the writing itself is the best evidence.)

A. My recollection is this: that when this statement was made out I asked Mr. Crawford the amount of money, notes, and accounts. Perhaps I did not state that just as I should. Just let me make a calculation. I think that I asked him the amount of money, notes, and accounts that he had in his possession that was taxable. The amount given in was $5,500. I asked him if that was all. He said it was.
Q. You may look at the signatures on the second page of that statement and state if you know who wrote them there.
A. John A. Crawford and myself.

(Here the statement above referred to is again offered in evidence for complainant by Weatherford, who requests that a copy be made by the master, to be used in lieu of the original in this case, as the original is in evidence in another suit.)
(Objection by Flinn as incompetent, irrelevant, and immaterial; also to the substitution of a copy, because the instrument appears on its face to have been written at different times, some of it being in ink and some of it in pencil.)

(Said statement is received and a copy made by the master
331 and marked "Complainant's Exhibit D.")

Cross-examination by FLINN:

Q. Where were you when this statement represented by Exhibit "D" was made?
A. The assessment was signed at Mr. Crawford's house—that is, I understood it to be Mr. Crawford's house—at his home.
Q. Where were you when you filled it out?
A. My recollection is that Mr. Bryant had commenced the assessment. He had commenced to make out a list of Mr. Crawford's taxable property, and I understood from him that he not exactly refused to give a statement of his property, but dallied or asked further time from time to time, perhaps, and I came to Albany to make a transcript of the assessment——
Q. Oh, I am asking you where it was that this was written.
A. My recollection is that this portion that is written in ink was written at the court-house.
Q. Did you see the ink part written?
A. I wrote that myself at the court-house; that is my recollection.
Q. Was Mr. Crawford present?
A. Not at that time.

Q. This portion in pencil, where was that written?

A. At Mr. Crawford's house or his brother's. I understand it was Mr. Crawford's house, here in Albany.

Q. After this was written and ready for him to sign did you read it over to him?

A. That is my recollection.

Q. Do you know whether you did or not?

A. I could not state positive, Judge, that I did, but my
332 recollection is that I did.

Q. Will you now look at that paper and state whether you read it to him or not before he signed it at the time he did sign it, or did you undertake to tell him what was in it at the time?

A. My recollection is that I read it to him.

Q. Did you ever read one of those statements to any one—all of that blank right down?

A. Well, yes; I have.

Q. Do you remember one instance? State who—just one instance.

A. Well, yes; I have. I can't just extactly state now who.

Q. Was it not your custom as assessor to just fill out those blanks as the people told you, and then have them sign and swear to it without ever reading it to them.

(Objection by Weatherford as immaterial and not cross-examination.)

A. Well, perhaps it was more a custom than anything else in the hurry of business, you know. I asked the questions just as they occurred on the blank. It was customary for the assessor to make out the statement on the paper, and after the statement was made out then they signed the affidavit, and I would swear them to it. That has been the custom, and that was mine.

Q. It was not your custom, then, to read the whole thing to them after you had filled it out?

A. It was not to every person.

Q. Well, I am speaking of your custom. I am not speaking of whether you did it every time or not. Did not you generally have them sign and swear to it without ever reading it to them?

A. Well, perhaps generally I did, Judge.

333 Q. Have you any certain recollection now of reading that paper to Mr. Crawford before he signed it?

(Objection by Wolverton as immaterial and as having been already asked and answered.)

A. My recollection is now that I read this to him. Perhaps I don't know that I read all of this on the paper, the affidavit and all, but my recollection is that the writing I did. Shall I give my recollection of it?

(By WOLVERTON: Certainly.)

A. My recollection is that I copied this—that is, in writing from the statement that Mr. Bryant had made out, and I read it to him to see if it was correct; that is the reason that I read it to him. It

rather impresses my mind that I read the items; whether I read all of the blank, I don't know that I did.

Q. Did you read the affidavit; have you any certain recollection of having read that?

A. I don't think I did; I don't recollect that I did.

Q. Did Mr. Crawford read it, to your knowledge, before he signed it?

A. I could not say that he did; he did not read it out loud.

Q. Who was present at the time that you made it out?

A. Mr. William Crawford was there, and a lady that I understood was their sister was all that I remember being there at the time.

Q. Where was the writing on the second page written of Exhibit "D," and who wrote it?

A. I wrote it, and I think all that was written in ink was written at the court-house.

Q. Was Mr. Crawford present then?

A. No, sir.

334 Q. Do you know whether that affidavit on the second page was read over to Mr. Crawford before he signed it?

A. I have no recollection of reading that affidavit to Mr. Crawford. I have no recollection whether he read it or not; I can't say.

Q. Have you any recollection of Mr. Crawford signing the affidavit on the second page except that you see his signature there and your own?

A. I remember of seeing him sign the affidavit on the second page.

Q. How came you to write that down at the court-house as it is there?

A. I took it, as I remember, from Mr. Bryant's assessing, from the——.

Q. Did you ask Mr. Crawford about it at the time he signed that affidavit on the second page?

A. I don't think I did particularly to that. I recollect asking him if that was correct, and he said it was.

Q. Did you read the writing on the second page to Mr. Crawford before he signed it?

A. I could not state positively that I did.

Q. Do you know whether you did or not?

A. I don't remember.

Q. Do you know whether Mr. Crawford read it or not?

A. He did not read it out loud.

Q. Did he read it all, to your knowledge?

A. No; not to my knowledge.

Q. It was already prepared for him to sign when you went to his house, was it?

A. That is my recollection now—that is, this second page.

(Here Weatherford requests leave to recall the witness after
335 the examination of Mr. Chamberlain, which was granted.)

Redirect Williams.

Being recalled, witness was shown what purports to be a verified statement of the assessable property of William Crawford for the year of 1881, and he is asked by Weatherford:

Q. Do you know who signed the name William Crawford as it appears at the bottom of the affidavit on the first page of that statement?

A. I signed the name of H. S. Williams myself, and Mr. William Crawford signed his own name.

Q. Did he sign his name in your presence and did you see him sign it?

A. Yes, sir.

Q. What was the date on which he signed it?

A. On the 17th of September, 1881.

Q. What was his object in signing that; what was it to and for?

(Objection by Flinn as immaterial, irrelevant, and incompetent.)

A. My understanding was that he signed it as being a correct statement of his taxable property for that year, the year of 1881.

(Here the statement above referred to is offered in evidence by Weatherford, for complainant, and the master is asked to make a copy of the same, to be used as evidence in this case, as the original is now in evidence in another case pending.)

(Objection by Flinn as irrelevant, immaterial, and incompetent, and also objects to the substitution of a copy, as it appears upon its face to have been written out at different times, some of it being written in pencil and some of it in ink.)

(The statement is received and a copy thereof made by the master and marked "Complainant's Exhibit E.")

336 *Recross.*

Recross-examination by FLINN:

Q. Who wrote that paper, Exhibit "E," that is written in ink?

A. I can't say for certain. I believe that Mr. Bryant wrote it.

Q. When and where was it written?

A. I don't know when nor where.

Q. Who wrote that part of Exhibit "E" that is written in pencil?

A. I wrote it myself.

Q. Where was it signed by Mr. William Crawford?

A. At Mr. Crawford's house, at the same place where the other Crawford signed.

Q. At William Crawford's house, here in Albany?

A. That is my recollection.

Q. Did you take that paper to him to be signed?

A. I did.

Q. Was it written out in ink as it is now when you took it there to be signed?

A. It was.

Q. Did you consult with him about whether it was right—that is, the writing—when it was written?

A. My recollection is that the blank was read to Mr. Crawford—that is, what appears upon the blank.

Q. Please answer the question. You are answering something else. Did you consult him as to the correctness of that when it was written?

A. I don't know that I did.

Q. It was prepared and taken there by you for him to be signed. All that was written in ink was written by you before you went there with it?

337 A. Yes, sir.

Q. And all that portion that you wrote in pencil after you consulted Mr. Crawford. The aggregate amount of notes is $5,000, is that what you wrote in there?

A. I am very sure it is.

Q. Does it appear that way on the face of the paper you hold in your hands?

A. It does not say the total value, it says the value.

Q. If you can't read what is right there before you, written by yourself, how can you remember what took place four or five years ago?

A. I certainly have read it.

Q. Have you read it correctly as it is written?

A. As I understand it I have.

Q. You have given your understanding before once when it was not asked for; I am asking you for the fact whether you ever read that just as it is written?

A. Do you mean that paper? I want to understand your question.

Q. I asked you to read what you had written there in pencil after you had taken it to Mr. Crawford.

A. The aggregate amount, $5,000; and I understood that to be dollars.

Q. Is that the way you read it before?

(Objection by Weatherford as immaterial and impertinent.)

A. I don't know whether I added the word dollars or not.

Q. Was that paper read over to Mr. Crawford before he signed it?

A. My recollection is that it was the amount of taxable property there as it appears in that; that is, I gave the same reason as I gave before.

338 Q. Was this paper read over to Mr. Crawford as it is written and printed before he signed it?

A. I don't think it was all, as it is written and printed.

Q. Was the affidavit read to him, to your knowledge?

A. Not to my knowledge.

Q. Did he read it himself, to your knowledge?

A. Not to my knowledge; from the fact that he did not read it loud, I am sure.

Q. Do you know of his looking at it; looking it over as though he was reading it, the affidavit, before he signed it?

A. I don't remember.

Q. Did you read the amounts that are written in ink to him before he signed it?

A. I think I did; I would not say positive that I did, it was so long, but I think I did.

Q. If you did, did you read them any more accurately than you did when you undertook to read that which is written in pencil?

A. If I read them at all I intended to read them correctly.

Q. Did John A. Crawford sign the paper marked Exhibit "D" at the same time that William Crawford signed this paper marked Exhibit "E," which purported to be their assessment for 1881?

A. My recollection is that he did.

Q. Did you go there more than once to get them to sign those papers?

A. I went there more than once to get their assessment.

Q. Your recollection is that they both signed the same day?

A. My recollection is that they did.

Re-redirect.

Re-redirect examination:

(Here Exhibits "D" & "E" are shown to witness.

339 Q. I will ask you to look at those papers and state whether or not they were signed at the time they bear date to the affidavit attached on the first page of each, and if those dates were the correct dates at the time they were signed by the Crawfords?

(Objection by Flinn as having been gone over by this witness before, and also that the papers themselves are the best evidence as to dates.)

A. That would be my recollection of it. My recollection is, although I might possibly be mistaken, that they signed them at the same time.

Q. You were at Mr. Crawford's house several times in reference to the matter?

A. I was there some two or three times; I done recollect just how many times.

Q. Is it not likely that the dates attached to the affidavit are the correct dates on which they were signed?

(Objection by Flinn as merely an argument and not a fact.)

A. I think so.

H. S. WILLIAMS.

(Here the affidavit of Geo. E. Chamberlain was taken, but, by consent of all parties, later was withdrawn.)

Complainant then offered in evidence a certified copy from the mortgage records of Linn county, Oregon, of a mortgage given by Jas. H. Foster to William Crawford, filed of record July 22, 1867, at four o'clock p. m., and recorded in Book of Mortgages, volumn "D,"

page 388, and on which was written across the face, "Mortgage satisfied in full and cancelled this July 31st, 1883. William Crawford. Attested: C. H. Stewart, clerk."

(Objection by Flinn as immaterial, irrelevant, and incompetent.)

340 Said copy is received and marked "Complainant's Exhibit F."

Here court took a recess until — o'clock, to meet at the same place.

Court convened at the hour appointed, and the case proceeded.

F. M. Daniel.

F. M. DANIELS called and sworn on behalf of complainants.

Questioned by WEATHERFORD:

Q. State your name, age, residence, and occupation.

A. F. M. Daniels; aged 51 past; residence, Scio, Linn Co., Oregon; occupation, merchant.

Q. Were you a member of the grand jury for the March term of the circuit court of the county of Linn and State of Oregon in 1882?

A. I think I was. I don't recollect the year I was on the grand jury. I thought it was 1883, but probably it was 1882.

Q. At the time that you were a member of the grand jury of this county did you investigate a charge by the jury against John A. Crawford in the matter of giving in his taxes some time prior to the time that you investigated?

(Objection by Flinn as irrelevant, immaterial, and incompetent.)

A. I did.

Q. Do you remember who was foreman of the grand jury at the time referred to?

A. Mr. E. T. T. Fisher, the surveyor.

(Objection by Flinn to the last question, same as the former one.)

Q. You are acquainted with John A. Crawford, are you?

A. Somewhat; I know him when I see him.

Q. Did he appear before the grand jury at that time and testify as to his taxable property?

(Objection by Flinn, same as last two above.)

341 A. He did, yes; he was there and made a statement under oath as to the list of his taxable property in this county and State.

Q. What question, if any, was asked him as to what monies, if any, was owing to him by J. H. Foster?

(Objection by Flinn, same as above and, further, that the law makes it the duty of the grand jury to keep a memorandum of what took place before it, and that memorandum is the best evidence.)

A. I think the question was asked him like this: "Does not

J. H. Foster owe you a certain amount of money?" I don't know what it was, but it was considerable—several thousand dollars. That was the question asked him by Mr. Hewitt, I think, was the man that was in there, if that was not the amount owing him by Mr. Foster, and he stated that he, Foster, did not owe him, as I recollect, anything, or at least we did not get anything out of him as to his indebtedness. We got nothing out of him as to Mr. Foster owing him anything. He stated he did not owe him anything.

Q. Mr. Crawford said that Foster did not owe him anything?

(Objection by Flinn, same as above and also as leading.)

A. He stated that Mr. Foster did not owe him anything.

Q. Mr. Crawford had been sworn before he made that statement, had he?

(Same objection by Flinn.)

A. Yes, sir.

Cross-examination by FLINN:

Q. Did Mr. Weatherford, one of the attorneys for the complainant, read over to you Mr. Foster's deposition upon the same subject just before you testified in order to refresh your memory?

A. I don't know what he read it for; I saw it.

342 Q. I did not ask you whether you saw it. I asked you whether he read it to you.

A. Yes; he read it to me, and I saw it, too.

Q. Was that about five minutes ago?

A. I don't know; I have no watch.

Q. Well, you can state whether it was about five minutes ago.

A. I think it was about five minutes ago.

Q. What did he read it to you for?

A. I did not ask him.

Q. He just took you into the back room and read it over to you, did he?

A. He took me into that room there (pointing).

Q. Did he ask you what you knew about it, and did you then state to him?

A. He asked me if I was on the grand jury at the time the case of Mr. Crawford was being investigated as to the amount of property he was supposed to have given in on his assessment—that was notes on hand—but that was about all.

Q. Then he read over to you Mr. Fisher's statement?

A. He did.

Q. What occurred then?

A. We came in here.

Q. Any further conversation?

A. No more that I recollect of, any more than he asked me if I was a member of the grand jury, and I told him that I was.

Q. Have you testified, as near as you can, to conform to the Fisher deposition?

A. No, sir; nothing from Mr. Fisher's statement at all.

Q. Wherein did you differ from Mr. Fisher?

343 Objection by Wolverton as immaterial, irrelevant, and not cross-examination.)

A. I don't think we differed any as to the answer of Mr. Crawford to the question of the indebtedness of Mr. Foster to him.

Q. Did not Mr. Fisher, in his deposition which you have just heard read by Weatherford, state that Mr. Crawford was asked to give an account of his taxable property?

A. He had already been assessed, and his assessment was something like $7,000.

Q. I did not ask you what occurred before that. I was asking what occurred before the grand jury.

A. Well, that was before the grand jury. I recollect the statement before the grand jury of Mr. Crawford was that Mr. Foster did not owe him anything; that was the question asked Mr. Crawford by the foreman and others. I think perhaps I did not ask him myself.

Q. Who was clerk of that grand jury?

A. I don't recollect; I think probably myself.

Q. Did you make a memorandum?

A. I think I did.

Q. Where is it? Produce it.

A. I think it is probably in the clerk's office. I left the papers with the clerk of the court.

(Here Flinn objects to all the evidence of this witness because there was a memorandum made of the evidence before the grand jury, and that is the best evidence.)

Q. Were you on the grand jury before?

A. Yes, sir.

Q. Were you clerk then?

344 A. I don't think I was clerk.

Q. You say you are not sure whether you were clerk at this time?

A. No; I am not sure.

Q. Were you ever clerk of the grand jury?

A. Well, I was clerk two years ago last spring; I think when Dr Crawford was foreman.

Q. Any other time?

A. I was clerk of the U. S. grand jury.

Q. Any other time in this county?

A. I was clerk once.

Q. Was that when John A. Crawford's case was under investigation?

A. I think it was; I don't remember certain.

Q. How many other subjects were under investigation at that time?

(Objection by Wolverton as immaterial, irrelevant, and not cross-examination.)

A. Well, we had a good many of them.
Q. Name some of them.

(Objection same as above.)

A. Well, burglary and some others.
Q. Who was accused of burglary?
A. A man by the name of Williams. I think he was accused of burglary, or stealing I should have said. Well, I could not say whether that was the grand jury or some other.
Q. Who was accused of any offense besides Williams and Crawford before that grand jury?

(Objection by Wolverton, same as above.)

A. Well, there was a great many accused by witnesses, but no bills found to amount to anything.
345 By the MASTER: The question was, who can you name in person?
A. There was another man from this town, I think, but I don't know him; I can't now recollect his name, neither can——
—. State whether a bill was found against him.
—. I presume likely a bill was found for stealing some goods out of Mr. Foxe's store down here; I don't recollect whether a bill was found or not.
Q. Do you recollect of any bill before this grand jury against any other person?

(Objection same as above.)

A. Well, this man Williams; I don't recollect about others.
Q. Do you recollect what questions were asked about him?

(Same objection as above.)

A. The questions asked were to identify the property.
Q. Who was present?
A. I don't recollect whether Fox and Brothers or Fox & Co. or not.
Q. Who appeared for the company?
A. I don't recollect whether it was the Jews or somebody here in town.
Q. Who asked the questions?
A. Mr. Fisher, I think.
Q. Can you repeat Mr. Fisher's language?
A. I don't know as I can.
Q. Can you repeat Mr. Fisher's language in any case except in this of Mr. Crawford's, that occurred before that grand jury?
A. Well, I don't know as I can in any case, even in Mr. Crawford's.
Q. Could you have recalled it in any case if Mr. Weatherford had not just read Mr. Fisher's deposition to you just now?
346 A. I don't know; I think I would.
Q. How long were you sitting on that jury?
A. About a week, I think; most of the time was on that case.

Q. You just stated that there was a good many other cases came up.

A. There were some whiskey cases.

Q. And one for burglary?

A. I think it was for stealing, one for felony; I think this man Williams was indicted and found guilty in a stealing transaction in this county.

Q. Have you now told all that occurred before that grand jury?

A. I don't know but what I have; a great many whiskey cases came up; there were not so many other cases that came up that there were no bills found.

Q. Was Mr. Pain before the grand jury?

A. He was.

Q. Did he testify that he agreed with Mr. Crawford to pay the taxes on what he owed him?

A. He testified as to what he owed to Mr. Crawford; I think he did say that he agreed to pay the taxes, as near as I can recollect.

Q. Who else testified to the same thing, that they had agreed with Mr. Crawford to pay the taxes on what they owed Mr. Crawford, before that grand jury?

A. I don't recollect now, there were so many before the grand jury that we called in that case; I think Mr. Pain and numerous other persons were before the grand jury as to whether they owed Mr. Crawford.

Q. Do you recollect of Burkhart being called before that jury?

A. I don't recollect which one of the Burkharts; I think there was one.

347 Q. What did he testify about owing Mr. Crawford?

A. I don't recollect now. I think he testified that he owed him, or it might be that it was this Mr. Pain.

Q. Do you know J. H. Burkhart, in this town?

A. I don't know the names of the Burkharts.

Q. The real-estate man?

A. I know him.

Q. That is his name. Did he go back the next day and correct the statement that the company did not owe John A. Crawford?

A. I think there was something in that respect, but what it was I don't just recollect. They first gave in a certain note that the Odd Fellows association or company, whatever it was, owed to Mr. Crawford, and from that it appears that something was done about that note that it was set aside; I don't just recollect what it was.

Q. Did not Mr. Crawford tell the grand jury that certain parties that owed him had agreed to pay the taxes and therefore he did not give it in?

(Same objection as above by Wolverton.)

A. He had to some and some he had not.

Q. I asked of certain of them; I did not ask of particular ones.

A. Well, one—Mr. Pain—he had.

Q. Your memory is not very distinct upon anything except that

question that was asked Mr. Crawford in relation to what occurred there, is it?

A. Well, not particularly. I remember something about it.

Q. Your memory is not very distinct as to what Mr. Burkhart did, is it?

A. No, sir; not exactly.

Q. Do you remember the amount that Mr. Pain owed to Mr. Crawford?

(Objection by Wolverton as immaterial, &c.)

348 A. I don't exactly. I think it was about $8,000; somewhere along there.

Q. Do you know how much it was claimed that the Odd Fellows' hall owed him?

A. No, sir; I don't. I don't recollect what Burkhart stated about the taxes or the amount either, now.

Q. Was that Odd Fellows' hall note before the jury?

A. Mr. Burkhart had a note before the grand jury from some kind of association. I think it was the Odd Fellows' association.

Q. Was that note given to John A. Crawford?

A. I can't tell. I don't know whether it was or not.

Q. Did you look at the note to see to whom it was made payable?

A. I did not.

Q. Did you look at it to see whether it was endorsed by any person?

A. I did not.

Q. The note was given in to see whether any person owed him and you say you did not look at it?

A. I did not myself; some of the parties did. There was such a note before the jury.

Q. You don't know who signed the note of your own knowledge?

A. I do not.

Q. Nor who owned it.

A. Well, to the best of my recollection the Odd Fellows owned it. It was payable to them.

Q. Payable to the Odd Fellows, and who had signed it?

A. Well, I don't know the parties. I did not look at the note. I did not have it in my hands.

Q. That is your recollection of it now from what you could gather?

A. Yes, sir.

Q. And Mr. Burkhart claimed that it was due to Mr. Crawford and that he had not given it in?

349 A. Yes, sir.

Q. And, as a matter of fact, it was the Odd Fellows' property?

A. Mr. Burkhart stated that he had it in his charge, and that it was payable to Mr. Crawford, as I understood it.

Q. You said, a moment ago, that it was payable to the Odd Fellows?

A. Payable by the Odd Fellows to Crawford.

Q. How came Mr. Burkhart by the note if it was Mr. Crawford's property?

A. I don't know.

Q. You don't know much about it, anyway. Did you satisfy yourself whether it was the note or not?

(Same objection as above.)

A. I am satisfied that Burkhart testified there that the association owed Mr. Crawford a certain amount of money.

Q. How did you know that they owed him?

A. I don't know at all, only by the statement of Burkhart's.

Q. What explanation did he give? You say they threw the note out and did not consider it any further.

A. I don't know.

Q. Was the indictment of Crawford based upon that note?

A. No, sir.

Q. You don't know whether it was thrown out or not?

A. No, sir; I don't know that it was thrown out, or that it was not. I know the note was before the grand jury.

Q. Did he explain satisfactorily to you that the note was all right?

(Objection by Wolverton, same as above.)

A. Not altogether.

Redirect.

Redirect examination by WEATHERFORD:

Q. Was any suggestion made to you or anything said in the conversation I had with you just before you commenced to
350 testify in regard to how you should answer any questions that might be propounded to you?

A. There was not.

Q. And is it not true that your testimony was not influenced in any way by the testimony given by Mr. Fisher?

A. It is true.

Q. The case of John A. Crawford, that was being investigated before the grand jury, caused considerable comment or was generally discussed, more or less, was it not, by the grand jury, or was given more precedence than all the others that came before the jury at that session, did it not?

Objection by Flinn as immaterial, irrelevant, and incompetent.

A. It was.

Recross.

Recross-examination by FLINN:

Q. Will you please explain why Mr. Weatherford read over Mr. Fisher's deposition to you a few minutes before you commenced testifying, if it was not to influence you?

A. I don't know why. He did not say, that I recollect.

(On reading the above to witness, at his request the following correction was made:)

The question was: "Are you acquainted with John Burkhart?" My answer is that I am acquainted with a good many Burkharts and all the Burkharts, but not with their names. But I wish to state that I am acquainted with one of them by name only, and that is the gentleman that lives out here in the country. That is the only one whose given name I am acquainted with.

F. M. DANIELS.

Complainants Rest (Sub Modo).

Here complainants rest, except that they desire to take the deposition of Geo. E. Chamberlin over again at some future time.

John Conner, for Defense.

JOHN CONNER, heretofore called on behalf of complainants,
351 is recalled*ed* on behalf of defendants.

Question- by FLINN:

Q. Mr. Conner, do you recollect the time of the transfer of this mill property by James H. Foster to John A. Crawford, and other property in Albany?

A. It appears the fore part of March—some time in 1885 or 1886. I can't swear positively which.

Q. At the time of the transfer of that mill property, known as the Magnolia mills, by Foster to Crawford how much did Foster owe the bank of which you are the manager and owner?

A. He owed the bank 5,000 on one note, a balance of one thousand to me individually, and one note of A. Pearce, endorsed to Foster, of 5,000, or rather, I would say, made payable to the order of Foster—endorsed by Foster to the bank.

Q. Who paid the $5,000 note to the bank that was signed by Foster?

A. John A. Crawford.

Q. How long after the transfer of the property was it that Crawford paid it?

A. A very few days.

Q. Who paid the $1,000—the balance that he owed you individually?

A. John A. Crawford.

Q. Was Crawford security on those notes or either of them?

A. He was.

Q. On one or both?

A. On both.

Q. When was the one thousand dollars paid to you individually?

A. February 18th, 1886.

Q. Who paid the $5,000 note given by Mr. Pearce to Foster and endorsed by him to the bank?

A. Mr. Pearce; A. Pearce.

Q. When did he pay it?

352 A. A short time; within a month, I think.

Q. A month from what time?

A. After Mr. Foster sold to Mr. Crawford. I think about a month after.

Cross-examination by WOLVERTON:

Q. Do you know where Mr. Crawford got the money to pay the $5,000 note—to pay the First national bank?

A. No, sir.

Q. What day was that note paid, as near as you can recollect?

A. I could not state. It is my impression now that he gave his own note payable in a few days, and paid it soon after.

Q. How was the $1,000 note paid—in cash or by note?

A. I could not say as to that.

Q. That was paid in 1886—the $1,000 note—was it not?

A. I think so.

Q. February, 1886?

A. Yes, sir.

Q. This real estate was transferred by Foster to Crawford in 1884?

A. Upon reflection I think it was, probably.

Q. The $1,000 note was paid, then, soon after the transfer, was it?

A. Yes, sir.

Q. Do you know where the money came from to pay that note?

A. I don't.

Q. Do you know where the money came from to pay the A. Pearce note?

A. No, sir.

Q. Did Mr. Pearce pay that in person?

A. He did.

Q. All at one time?

A. No, sir.

Q. How many payments did he make on that, if you remember?

A. I don't.

Q. That was all paid within a month after the transfer?

A. Well, so far as that note was concerned Mr. Pearce, I think, gave his note, and I considered that he paid the other note by it.

353 Q. How long was Mr. Pearce paying off the note that he gave in lieu of this $5,000 note, if you remember?

A. Three or four months, I think, to the best of my recollection.

Q. Did Mr. Crawford say anything to you as to why he was giving his notes in lieu of those which he had become security for?

A. He said something; what it was I don't remember.

Q. How did Mr. Pearce pay the note which he gave in lieu of that note that he paid—by another note, or did he pay it in cash?

A. My impression is that he paid part of it and gave his note for the balance when he first came in to take up the note of Mr. Foster.

Q. Then the balance that he gave his note for, did he pay it in cash, or did he give another note for that to continue it?

A. I think he gave another note.

(S'g'd) JOHN CONNER.

Here court adjourned to meet at the office of the master, in Portland, December 20th, at ten o'clock a. m.

PORTLAND, OREGON, *Dec. 20th.*

The parties met at the office of G. H. Durham, master.

Pursuant to appointment and by agreement the matter was postponed until one o'clock p. m. at the same place.

The parties met at the time and place appointed as above set forth, complainants appearing by *their* attorneys, Weatherford and Wolverton, and the defendants in person and by their attorney, L. Flinn, and the case proceeded, Wood, att'y for pl'ff, also appearing later.

It was then agreed by the parties herein that the deposition of Geo. E. Chamberlain taken at Albany might be withdrawn, and that it need not be extended by the reporter, and that complainants may take the said deposition of said Chamberlain, either before the master or a notary public, at Albany, at any time before the
354 case is submitted without formal notice.

J. H. FOSTER, one of the defendants, was then called on behalf of defendants and questioned by FLINN:

Q. State your name, age, residence, and occupation.

A. J. H. Foster; aged 64; residence, Albany, Linn Co., Oregon; occupation, I am or have been in the employ of Mr. Crawford.

Q. Are you one of the defendants in this suit?

A. I suppose I am.

Q. Are you acquainted with John A. Crawford, William Crawford, and Ashby Pearce, the three other defendants?

A. I am.

Q. You may state whether or not you sold to John A. Crawford, one of the defendants, the property known as the Magnolia mills, in Albany, and another property, on or about the sixth of February, 1884; and, if so, you may state the terms of the contract and the circumstances under which the property was sold.

A. About that time I sold the mill known as the Magnolia mills to John A. Crawford. The price of said mill was $38,000. I likewise sold to him at the same time a dwelling-house and lot for $2,500, what is known as the Albany water works for $3,000, a quantity of sacks for $3,000, book accounts and some notes for $3,000, and a small house and lot close by the mill. I think the price of that was $500. I don't remember of anything else that I sold to him at that time.

Q. You may state to whom and when.

A. I would further state that I sold to him at the time, but the property was deeded to William Crawford, some brick blocks in Albany for $25,000.

Q. You may state what property, if any, you sold about the same time to Ashby Pearce, one of the defendants.

A. I sold to Ashby Pearce a brick block in the town of
355 Albany. I think the price of it was $4,000.

Q. Is this property which you have just mentioned as being

sold to Crawford and Pearce the same property that is described in the complaint in this suit?

A. I have not seen the complaint.

Q. You may state whether it was all of the property, or nearly all, that you owned at that time.

A. It was the muniments of all the property I owned at that time.

Q. What other property did you own at that time—I mean at the time the deeds were made out, executed to Pearce and to Crawford by you?

A. That is all the real estate I owned; there was some flour and feed and probably a few other things, household goods, &c.

Q. How much flour did you own that had been shipped and upon which you had received advances at that time?

A. At the time I made the sale to Crawford I think there had been shipped by Sibson, Church & Co. two lots of flour containing ten thousand sacks each of one hundred pounds, and, if my memory serves me right, I think there was stored in the warehouse in East Portland fifteen thousand sacks, or somewhere in that vicinity, of one hundred pounds each, which had been turned over to the Bank of British Columbia; and there was in the mill something like three hundred barrels of flour and a quantity of feed.

Q. For what purpose was the fifteen thousand sacks of flour turned over to the Bank of British Columbia?

Objection by Weatherford as immaterial, irrelevant, and not proper testimony.

A. It was turned over to them to secure them for money advanced on the flour.

Q. The flour, then, was yours; you had turned it over to them to secure them for advances?

356 Objection by Weatherford as leading.

A. The flour was mine, and I turned it over to them and they advanced me money on it, but the flour was theirs, or their claim would hold the flour until I paid them the money that I had drawn on it.

Q. What advance had been made upon the flour shipped for you by Sibson, Church & Co. and the flour held by the Bank of British Columbia—that is, how much per barrel had been advanced.

Objection by Weatherford, same as above.

A. I can't say positive from recollection, but I think the first lot was $3.70; that is my recollection; that when all of the claims they had against the flour they held for freight and insurance and the money they had advanced amounted to about $3.70 a barrel.

Q. At the time you received those advances what was flour worth in Portland per barrel?

Objection by Weatherford, same as above.

A. I can't say positively, but I think the most of the time it was worth over $4.50 a barrel. The bank, if I recollect right, and I think I do, had advanced me on this flour up to near the time that flour declined $4.25 a barrel, and I supposed that I had flour enough shipped and in the warehouse in East Portland for to be able to draw several thousand dollars from the bank on it at the time that flour declined, and the bank informed me that flour had declined and they did not think they could advance any more money than they had on the flour.

Q. You don't mean to say that the Bank of British Columbia had advanced you $4.25 a barrel on this flour, do you?

Objection by Weatherford as leading, immaterial, and irrelevant.

A. I do not. As I before stated, when I commenced storing
357 flour with them and drawing money from them most all of this flour, this 20,000 sacks that had been shipped by Sibson, Church & Co., had been deposited in the warehouse in East Portland, and money had been drawn on it, and I think, as I before stated, that they proposed to advance me $4.25 on that flour, and I continued to send them flour and to draw money, and had no knowledge but what they intended still to let me draw the $4.25 until I received this notice from them, stating that flour had declined and they could not advance that amount any more.

Q. How many sacks of flour did Sibson, Church & Co. ship for you, had they shipped, at the time of this sale? I understood you to say ten thousand.

Objection by Weatherford, same as above.

A. My understanding is now that he said they had shipped two lots of ten thousand sacks each, making twenty thousand sacks in both lots, of a hundred pounds each sack.

Q. Who got the fifteen thousand sacks of flour, if you know, that you turned over to the Bank of British Columbia as security for the money advanced by them?

Objection by Weatherford, same as above.

A. The next morning after I made the sale to Crawford I turned over to William Goltra the two lots of flour shipped by Sibson, Church & Co., the twenty thousand sacks before stated, and the amount of flour stored at East Portland and held by the Bank of British Columbia, which I think was about fifteen thousand sacks. I turned that over to William Goltra, assigning to him all my right, title, and interest in said flour.

Q. Mr. Galtra claims that he did not and would not receive it. Now, I wish you to state who got that flour from the Bank of British Columbia, if you know, that you turned over to them, and what was done with it.

358 (Objection by Weatherford, same as above.)

A. I will now state that some time before I made this sale to Mr. Crawford—some time in the month of January, I think; maybe it

was before—I gave Sibson & Church an order to get the ten thousand sacks of flour from the Bank of British Columbia by them paying to the bank the amount they had advanced on it. They had not drawn this flour from the Bank of British Columbia at the time I turned this flour over to Mr. Goltra, and I supposed from what Mr. Church said——

(Objection by Weatherford to anything said by Mr. Church or any supposition of the witness.

A. —when he came up to Albany, after I had made these transfers, that they was not going to take this flour, but afterward I received a letter from the Bank of British Columbia, stating that they had taken that flour and that they had delivered it up to them on that receipt and that they had sold them the balance of flour that I had on hand.

Q. Up to the time of the sale of your real property to Mr. Crawford had Sibson, Church & Co. agreed to take this flour of the Bank of British Columbia?

(Objection by Weatherford as immaterial, irrelevant, and leading.)

A. I had given them this order for to get the flour, and they had agreed to ship it.

Q. When was that?

A. I could not remember the date of the order, but I presume it was some time in January.

Q. Why did not they ship it at once?

(Objection by Wheaterford as immaterial, incompetent, and irrelevant.)

359 A. That I could not tell you.

Q. When did they pay the Bank of British Columbia the advances made?

(Objection by Weatherford, same as above.)

A. I could not say when it was, but it was some time after this sale was made to Mr. Crawford.

Q. You stated that from what Mr. Church told you in Albany after your sale of real property to Crawford that you understood they were not going to take this fifteen thousand saks of flour. Now, please state what was said, or whether he was one of the firm of Sibson, Church & Co.

(Objection by Weatherford as immaterial, incompetent, and irrel evant.)

A. He was one of the firm of Sibson, Church & Co.; his exact language it would be impossible for me to state; there was a very strong impression on my mind that they did not intend to pay the advances that was on the flour—that is, the flour in the possession of the Bank of British Columbia—but what he said I disremember.

(Objection by Weatherford to the answer as being simply his im pression and without stating facts, and it is improper.)

Q. Did not Mr. Church go to Albany to see you about that flour the next day after you made the sale to Mr. Crawford?

A. Mr. Church was there at Albany after I made the sale to Crawford; how soon it was I do not remember, and whether it was particularly respecting the flour, either, I do not remember.

Q. Did you understand that your order to Sibson, Church & Co. compelled them to take the flour off the hands of the Bank of British Columbia and to pay the bank its advances, or was it optionary with them whether they took it or not?

360 (Objection by Weatherford as immaterial, &c.; and, further, that it does not call for a statement of facts, but the opinion of witness.)

A. My opinion was that it was op-ionary with them whether they took the flour or not. The agent of the Bank of British Columbia came up to Albany, and he requested me—I told him that I had given this order to them, and my recollection is that he impressed me with the idea that they did not feel disposed to take it. I told him that I had transferred this flour, or my right and title to it, to Mr. Galtra, and he appeared to think that he would not be able after he disposed of it to get all of his money out of it.

Q. Is it not true that the claim of Sibson, Church & Co., or Sibson, Quackenbush & Co., the successors of Sibson, Church & Co., upon which a judgment was obtained against you for about $13,000, is based mainly upon the loss on the 20,000 sacks of flour which they shipped for you and upon the loss on the flour which the Bank of British Columbia held for you and turned over to them after you sold the property to Crawford?

(Objection by Weatherford as immaterial, irrelevant, and incompetent, and the pleadings in the case in which the judgment was obtained are the best evidence of what the judgment is based upon, and the judgment is neither denied nor admitted in this suit.)

A. I think they rendered the amount to me about the 24th of January; it was not a great many days before the sale to Crawford, and I don't think I ever got anything from them after that time, and their claim against me at that time was a few dollars over six thousand; then the balance is indebtedness that occurred on the sales of this flour, money on the sales of this flour advanced and costs not paid, which make up the amount.

Q. Have you a statement of the sales of this flour which
361 was made out by Sibson, Church & Co. and rendered to you, setting forth their account after it was all sold by them? If you have, please produce it.

(Objection by Weatherford as immaterial, irrelevant, and incompetent.)

A. I think there is one somewhere; I have got it in my possession now.

(Here a paper is shown to witness, which the master is requested to mark "Defendants' Exhibit 2.")

Q. Examine that exhibit and state from whom you receivedit.
A. I received this from Sibson, Church & Co.
Q. When? State as near as you can when you got it.
A. There appears to be a date on it here of April 15th, 1885.
Q. I asked you when you got it, not what the date is.
A. I suppose I got it about that time.

(Here a paper marked "Defendants' Exhibit 3" is shown to witness.)

Q. State whether or not Exhibits "2" and "3" came to you at the same time from Sibson, Church & Co.
A. They came at the same time.
Q. You may now state, if you can, when they came, or whether the date of the letter is at the time they came or near it.
A. I think they came at the same time.
Q. By whom is the letter signed?
A. Sibson, Church & Co.
Q. When was it dated?
A. August 15th, 1885.

(Here Exhibits "2" and "3" above mentioned are offered in evidence for defendants.)
(Objection by Weatherford, for the reason that neither of them have been sufficiently identified to entitle them to be received.)
362 (Here papers marked "Defendants' Exhibits 4 and 5" are shown to witness.)

Q. State if you have ever seen those before; and, if so, what they are and when and from whom you received them.
A. The paper marked Exhibit 4 is an account of sales of ten thousand bags of Magnolia flour——

(Objection by Weatherford to witness giving an account of the contents.)

A This is an account of sales of flour sold by Sibson, Church & Co. for me.

(Objection by Weatherford to the answer as not responsive to the question, and as immaterial and an attempt to give the contents of the writing.)

Q. What flour—the 20,000 sacks that you have spoken of or some other flour?

(Objection by Weatherford that the paper itself is the best evidence.)

A. The ten thousand sacks of flour spoken of before.
Q. Whick exhibit is that?
A. Exhibit 4.
Q. Examine the other exhibit and state what it is.

(Objection by Weatherford that the writing is the best evidence of what is in it.)

A. That is an account of sales of ten thousand bags of flour sent to me as sold by Sibson, Church & Co.

Q. What flour is that mentioned in that exhibit?

(Objection by Weatherford, same as above.)

A. Ten thousand sacks before mentioned by me.

Q. What else, if anything, was there in Exhibit "5" besides the ten thousand bags of flour?

363 (Objection same as above.)

A. An account of sales of ten thousand sacks more sold by Sibley, Church & Co.

Q. What flour was that?

(Objection same as above.)

A. It was ten thousand sacks of flour, before mentioned by me, which was received from the Bank of British Columbia after the sale to Mr. Crawford.

Q. Exhibits "4" and "5" then contained a statement of sales of 30,000 sacks of flour sold by Sibson, Church & Co. on your account, did they; and were those accounts rendered to you by Sibson, Church & Co., or by Sibson, Quackenbush & Co., their successors?

(Objection by Weatherford as leading, and also that the exhibits are the best evidence of what they contain.)

A. These accounts were rendered to me by Sibson, Church & Co., setting forth the sales of 30,000 sacks of flour sold by them on my account.

Q. When were they rendered to you? State as near as you can.

(Objection same as above.)

A. The letter that fetched them, Exhibit Three, is dated August 15th, 1885, and I presume I received them about that time.

(Here Exhibits "4" and "5" are offered in evidence for def'ts. Objection by Weatherford as not having been properly identified.)

Q. What property did you sell to Ashby Pearce, one of the defendants?

A. I sold a brick block or house, situated in Albany, on Main street or First street.

Q. How was it encumbered?

(Objection by Weatherford that the records are the best evidence.)

364 A. My wife has a deed to the property during her lifetime after my death.

Q. Mr. Pearce took a deed subject to that deed, did he?

(Objection same as above.)

A. He got a quit-claim deed from me for the property without her signature.

Q. What was that property worth that you sold to Mr. Pearce at that time? You may state what you considered it worth with a

clear title and what you considered it worth subject to the deed that your wife holds.

A. At the time it was sold to him I don't think, with a clear title, that it could have been sold for $5,000, and with the encumbrance that it had on it I doubt whether it could have been sold for over $3,000, or $3,500 at the outside. I don't think it could have been sold for over $3,000, if that.

Q. What did Mr. Pearce pay for that property?

A. He paid $4,000, or he paid——

Q. How did he pay it?

A. Mr. Pearce—or I will state that I went to John Conner, the banker, and asked him, requested him, to borrow $5,000, and Mr. Pearce would go security on the note. He said he had loaned to me the limit that he was permitted to loan, but if Mr. Pearce would become principal on the note and I would endorse he would let me have the money. He wrote the note and Mr. Pearce signed it as principal and I endorsed it, and Mr. Conner let me have the money on it out of his bank, and Mr. Pearce paid that note off to Mr. Conner, and I let him have the house to satisfy him for the amount of the note.

Q. Do you mean the brick house?

365 A. Yes; the brick house.

Q. What else did you let him have, if anything?

A. I let him have a hundred barrels of flour and some feed.

Q. What was that for?

A. That was part pay for the note. I don't remember the value of the flour and feed.

Q. How much feed did you let him have? State as near as you can.

A. I don't remember the amount, but I don't think the flour and feed all amounted to over between seven and eight hundred dollars.

Q. When did you let him have this flour and feed?

A. The next day after I sold to Mr. Crawford.

Q. When did you sell him the brick house?

A. That same day, I think it was.

Q. Did you ever pay Mr. Conner or the bank that $5,000 or any part of it?

A. I did not.

Q. You may now state how Mr. Crawford paid you or was to pay you for the property you sold to him about the sixth of February, 1884.

A. He paid me in notes that he held against me—my notes—and he paid notes off that he had endorsed for me to different parties, and he was likewise to purchase and make good to parties who held my receipts for wheat that was in store—something near 20,000 bushels of wheat that I was short in the warehouse—he was to make that amount good to the farmers; either give them his receipts for the wheat or buy the wheat from them; clear me from responsibility for the wheat; and there was an account that he had against me on a certain amount that was to be counted in the sale.

Q. You may state under what name you were then and had been doing business for a number of years prior to that time.

A. The name of J. H. Foster & Co.

Q. Please explain how you came to be short in wheat that year and what you told Mr. Crawford about it at the time of the
366 sale, and as to it being a part of the consideration.

(Objection by Weatherford as immaterial, &c.)

A. The main reason why I came to be short in this wheat was the miller had taken a large amount more of wheat to make a barrel of flour than we had been accustomed to using before. We had just built the mill over and made it partially a roller mill and part a burr mill, and I had got a new miller, one different from what I had before. We had always calculated to make a barrel of flour out of at least four bushels and a half of wheat, and when we came to make a calculation this time we found that it required about five bushels of wheat to make the flour; therefore we had taken out of the warehouse a large amount more of wheat than I had made a calculation on taking, the warehouse being a large building with deep, dark bins, some thirty-odd feet deep, the wheat being drawn out it was most impossible for to tell, and along not a great while before I made this transfer to Mr. Crawford I went up and in looking the best I could into the bins I thought they looked to be sunk more than they had ought to be, and I had the hands to level the bins and measure them, and we then made a calculation of how much wheat we supposed there was on hand, and it fell very far short of what I supposed there was; then I examined particularly and I found that I was very much behind hand in wheat. At this time the price of flour had dropped to some extent. Having this large amount of flour on hand unsold and this large amount of short wheat, when I came to make the calculation there — be near 20,000 bushels of wheat short I became alarmed and felt the condition I was in. I felt that I must make up that wheat at all hazards, and I heard so much talk about short wheat—I had heard Judge Boise—(objection by Weatherford to anything said by Judge Boise)—*A.* heard farmers—(objection also to what farmers said)—*A.* making such heavy threats on
367 men that would be short with them in wheat. I went first to Mr. Burkhart. He claims to be or is an agent to one of those companies that loan money; told him that I would like to borrow $15,000, and I would give the best of security for it. He said there would be no trouble in me getting it with the security that I proposed to give, and in a few days after he told me the parties in Portland refused to loan any money on property in Albany. Their plea was this: mortgage law was working a hardship on them. I came myself down here to Portland and got Mr. McCraken to try and solicit a loan from the banks or parties here. He first went around by himself, and I did not go with him. He said that he could not succeed in procuring a loan by giving a mortgage on property in Albany, it made no odds how good the security was. I went myself then to several banks here. They said they understood there was to be — school-house built in Albany, and

that they could not tell the amount of taxes that might be levied on that account, and they did not feel inclined to loan money nor would not in Albany, although they had been informed that the security that I offered was of the very best. I then returned home. I felt then that there was no other show for me without I could get the money from Mr. Crawford, although I had said nothing to him about it. Some days after, not many, he spoke to me; asked me if I was not in a very close place. He understood that I was trying to borrow money. I told him that I was in a very close place, and then went on and told him just how I was situated and how he was, too—how that he was on these certain notes that he had signed to different parties as security for me; and I likewise told him about this short wheat; that that was my greatest trouble just then. He said that he thought I ought to secure him some way. I told him I thought so, too, and I was willing to do so. He first spoke
368 about a mortgage. I told him that the first thing that I could do or would do I must have the money to buy that short wheat with; that I did not feel disposed to place my property if it was in my power to do so from getting that money, because I knew the consequences, and along afterward, I don't know how long, not long, though, I met him again and we talked the matter over, and my recollection is that he said that Strahan thought he better buy the property. I told him that I would sell him the property, but he must become responsible for that short wheat. He said it would take a good deal of money for that, and he did not know whether he could get the money or not to meet these obligations. He said he would study it over. I told him the price that he might have the property for if he would do that, and he said he would study it over. Afterwards he came to me and said, "I have concluded to take that property. I will take the chances on it." I then told him that if he did and met this respecting the short wheat, why, he could have it, and he said he would do it; then he said Strahan would make out the deeds; that Mr. Strahan, if I understood it right, that he was sick that day and would not be able to be in his office, and was not really able to go to work to make out the deeds. He was in bed, so I was informed. I sent the old deeds up to the house and Mrs. Foster and me came down to his house in the evening along after dusk. He made out the deeds to Mr. Crawford for the property and we signed them. Mr. Crawford turned over to me the notes that he held against me, and he likewise gave me an obligation—Mr. Strahan wrote it out; it was similar to a note—that he would be security, that he would buy that wheat, and when he bought the wheat that was to be delivered back to him again. I signed the papers that was gotten up by Mr. Strahan turning the property over
369 to Mr. Crawford, and I think it was the next morning Mr. Strahan came into the office and made out some other papers respecting the books, &c., and Mr. Crawford some time, not long, afterward took up those notes that he was security on for me and delivered the notes over to me, with the exception of the note to Frank Parton. He said he had taken that up, but he had mislayed

it and he could not find it, but he has since found it and given it to me.

Objection by Weatherford to all that part of the answer referring to conversations had with other persons than Crawford—as to what they said—as being hearsay and irrelevant.

Q. You may state how you came to make one of the deeds to William Crawford.

A. There were part of the notes was drawn in favor of William Crawford. Mr. John A. Crawford requested me to make the deeds for the brick house to William Crawford and it was so made.

Q. What do you mean by saying there were part of the notes drawn to William Crawford? Do you mean that you owed William a certain amount?

Objection by Weatherford as immaterial and as leading.

A. I mean that part of the notes were William Crawford's notes—payable to him.

Q. Part of what notes?

A. The notes that were delivered to me for this property—in part payment, I me-nt to say, for this property.

Q. Whose notes—that is, who made the notes?

Objection by Weatherford, same as above.

A. Notes given by me to William Crawford.

Q. Have you those notes with you?

A. Here are the notes that were held that belonged to William Crawford.

Q. How many are there? Just state the number in that
370 connection, Mr. Foster.

A. Six notes.

Q. You may state whether you owed Mr. William Crawford the full amount of those six notes as they there appear at the time of the sale of the property to John Crawford.

(Objection by Weatherford, same as above.)

A. I owed those notes to William Crawford at the time of the sale.

(Here the master is requested to mark the six notes above referred to for identification. The notes are attached together and marked in blue pencil "6.")

Q. You may state what the consideration of those six notes was.

A. The consideration of those six notes was William Crawford held five notes secured by a mortgage amounting to $10,000 against me or against James H. and John Foster and on that mortgage there was $6,000 of interest due. These six notes were given in lieu of that mortgage, They delivered up the other five notes of James H. and John Foster and cancelled the mortgage.

Q. You may state whether you have those five notes here that were given up then.

A. I have the five notes that were given up at the time these notes marked "6" were executed and delivered to Crawford.

Q. Please produce them and have them marked by the master for identification.

(Here the five notes last above referred to are marked "7" in blue pencil.)

Q. You may state why these notes were cancelled or given up and new ones executed and what agreement about the taxes, if anything, there was.

(Objection by Weatherford as immaterial.)

A. Mr. Crawford, in speaking of these six notes marked "6," when I gave those notes to Mr. Crawford and took up the others he reduced the interest from ten to eight per cent. on the five notes
371 drawn for $2,000 each and on the $6,000 note he did not charge me any interest and I agreed to pay the taxes on these notes, and I told him I would not take them out of my indebtedness. I think that was the words I used.

Q. What agreement was there about the payment of the taxes, if any, on the five notes marked "7" by the master?

A. I don't particularly remember about the agreement on those notes. In 1876 I remember perfectly well, though, that I agreed to pay the taxes on these notes, and I think I did so before, but I am not so positive about that as I am about the notes of 1876. I know positively I agreed to do it.

Q. What was the consideration about your paying taxes if he would let the notes run in 1876?

A. I had several reasons for it, or not several, but I had one reason for it—that was, he was allowing the interest to accumulate without ever having to pay it.

(Objection by Weatherford as not responsive to the question and as an evasion of it.)

Q. Please state the consideration and what the reason if there was an agreement or consideration between you at that time. That is what I mean.

A. The consideration was that he was allowing me to keep the money, extending the time to me, and I had it at a reasonable interest.

Q. You may now state what those five notes marked "7" by the master were given to William Crawford for—that is, what was the consideration?

A. Their consideration was part of the price of the Magnolia flouring mills when I bought it from Mr. Crawford.

(Here both sets of notes above referred to are offered in evidence and the master is requested to make copies and substitute
372 them for the originals, as the originals are in evidence in a case now pending in the State circuit court. The six notes first above referred to are copied and the copies attached and marked

"Defendants' Exhibit 6," and the five notes are copied, the copies attached together and marked "Defendants' Exhibit "7.")

(Objection by Weatherford to the introduction of either notes or their copies, because they have not been properly identified.)

Q. Mr. Foster, you may state who executed the six notes marked Exhibit "6."

A. I executed those notes and signed them "J. H. Foster & Co."

Q. Who executed the five notes marked Exhibit 7?

A. J. H. Foster and John Foster.

Q. Is John Foster your brother?

A. Yes, sir.

(Here the notes are again offered in evidence by defendants and the substitutes marked as above stated.)

Q. When were those six notes marked Exhibit "7" surrendered to you?

Objection by Weatherford as having been gone over once.

A. At the time I made the sale to Mr. Crawford.

Q. You may state what notes Mr. Crawford had endorsed or signed with you that he paid as a part of the purchase price of his real property.

A. He paid a note to the Bank of British Columbia of $5,000 and delivered that note to me.

Q. Have you that note?

A. I have; it is here. (Produces it.)

(Here the master is asked to mark the note last above referred to for the purpose of identification, and it is marked "8" in blue.)

Q. Who signed that note?

A. James H. Foster & Co., J. A. Crawford.

Q. Who paid it?

A. I suppose J. A. Crawford; he delivered the note to me.

373 Q. Did J. H. Foster & Co. pay the note, or any part of it?

A. No, sir.

(Here the note is offered in evidence by defendants, and the master requested to substitute a copy therefor, as the original is in evidence in another case now pending. The note is received, a copy made and marked "Defendants' Exhibit 8.")

Q. What other notes have you that Mr. Crawford paid as a part of the purchase price of that property?

A. Here are two notes which Mr. Crawford paid, made payable to John Conner. One of them payable to John Conner, the other to the First National Bank at Albany, Oregon.

(Here the master is asked to mark the two notes last above named for the purpose of identification, and the notes are attached and marked "9" in blue pencil.

Q. What part, if any, of those notes did Mr. Crawford pay?

A. The note payable to John Conner he paid one thousand dollars on; the note payable to the First national bank he paid $5,000 on.

Q. Who executed those notes?

A. J. H. Foster & Co. and John A. Crawford.

Q. Who got the money, and for whose benefit were they executed?

A. They were executed for the benefit of J. H. Foster & Co.; I received the money, J. H. Foster.

Q. For whose benefit was this note marked Exhibet "8" executed?

A. I got the money on that, too. I, J. H. Foster & Co., got the money on that note.

(Here the two notes last above referred to, attached together and marked in blue "9," are offered in evidence for defendants, and the master requested to substitute copies thereof, with all the endorsements, as the originals are in evidence in a case now pending in the State circuit court. Said notes are received, copies made, and marked Defendants' Exhibit "9."

Q. You may state what notes, if any, John A. Crawford
374 owed you or you owed John A. Crawford at the time of the sale of this property to him by you on February 6, 1884?

A. I owed to John A. Crawford a note dated April 28th, 1876. It was delivered up to me.

Q. I did not ask you just what notes you owed. You can identify them in a general way, without reading their contents. We don't care for that.

A. Well, I would like to ask a question or two about it, what you require, to give the date or what?

Q. Just give the number or date.

A. There was three notes.

Q. Please state the amount and date of each one.

A. First, the amount of $3,000, dated September 12th, 1878; second, the amount of $8,605, dated April 28th, 1876; and, third, the amount of $5,325, dated April 28th, 1876.

(Here the master is asked to mark the three notes for identification, and they are marked in blue pencil "10, 11, 12," respectively.)

Q. You may examine the note for $3,000, marked "10," and state who signed that note.

A. I signed it, J. H. Foster & Co.

Q. What was the consideration for that note?

A. The consideration was money borrowed, gold coin.

Q. You may state whether you owed that note at the time of this transfer.

A. I owed that note at the time of the transfer.

Q. What payments had you made on that note prior to the transfer?

A. There was not any payments on it.

Q. You may examine the note for $8,600, marked "11," and state who executed that note.

A. I executed that note, J. H. Foster.

Q. What was the consideration for that note?

A. That note was given in lieu of or in place of another
375 note that Mr. Crawford held against James and John Foster. I bought out John Foster, and agreed to take up his note and gave this note in the place of that note.

Q. Was that note given about the time that you bought out John Foster?

A. About that time.

Q. You may state whether or not John Foster and James H. Foster constituted at one time the firm of James H. Foster & Co.

A. They constituted the firm of James H. Foster & Co. from the time we bought the mill from Mr. Crawford until I bought him out in the spring of 1876.

Q. You may state when it was that you purchased the mill from Mr. Crawford.

A. We purchased the mill of Crawford in 1867.

Q. You may examine the note marked "12" and state who executed that note.

A. I executed that—James H. Foster.

Q. What was the consideration of that note?

A. $5,325 is the amount of it. The consideration of it was other notes, I think.

Q. Well, you may state what other notes, if you remember.

A. One note that was delivered up to me at that time for $3,000, dated July 20th, 1875, and one for $2,000.

Q. Have you those notes here? If so, please produce them and have them marked for identification. State the amount of those notes.

A. One was for $3,000 and the other for $2,000 and the interest that was on them.

(The notes are marked, in blue pencil, "13 and 14" respectively.)

Q. Who executed or signed those notes marked "13 and 14"?

A. They were signed by J. H. Foster & Co.

Q. Have you the note or notes for which the note of $8,605, marked "11," was given in lieu of?

A. I have.

Q. Please produce it.

376 (Here the note is produced and marked, in blue pencil, "15.")

Q. Who executed that note, marked "15," for $7,593?

A. J. H. Foster & Co.

Q. At the time Exhibits "13, 14, & 15" were executed who composed the firm of J. H. Foster & Co.?

A. James H. Foster & John Foster.

Q. State, if you know, what the consideration was of those three notes marked "13, 14, & 15."

A. I could not positively say; either wheat or money. It might possibly have been some other notes and calculated into them at the time they were given.

(Here the notes marked "13, 14, & 15" are offered in evidence and the master requested to substitute copies thereof, as the originals are in evidence in a case now pending in the State circuit court. Said notes are received, copies made, and marked "Defendants' Exhibits 13, 14, & 15," respectively.)

Q. You may state whether or not the three notes marked, respectively, "10, 11, & 12" were surrendered up to you as a part of the purchase price of the property you sold to Mr. Crawford on February 6th, 1884.

A. These three notes were delivered up to me by Mr. Crawford as a part of the purchase-money for the property sold to him at that time.

Q. Had any payments been made on those notes other than those endorsed thereon now at the time they were surrendered up to you?

A. No other payments had been made on them besides those now endorsed on the notes.

Q. Did you owe him the full amount thereof except what was endorsed thereon at the time?

A. I owed him the full amount of those notes except what was endorsed on them.

377 Q. You may state what arrangements was made between you and Mr. Crawford at the time of the execution of those notes about the payment of the taxes.

(Objection by Weatherford unless it appears upon the face of the notes, as they show the contract of the parties.)

A. I agreed to pay the taxes on those notes or not take them out of my indebtedness, and I did not.

Q. You did not what?

A. Take them out of my indebtedness.

Q. In giving in your taxes?

A. In giving in my taxes.

Q. Was that part of the consideration in getting the money of Mr. Crawford or of fixing the rate of interest?

A. That was part of the consideration that I gave him when he got the notes.

(Here the notes marked in blue "10, 11, & 12" are offered in evidence and the master requested to substitute copies therefor, as the originals are in evidence in a case now pending in *a case in* the State circuit court. Said notes are received, copies made and marked respectively "Defendants' Exhibits 10, 11, & 12.")

Q. You may state now how much wheat Mr. Crawford purchased for you to supply the shortage in your contract of sale with him.

A. According to a statement that I made out, and I think it is correct, there was at that time that I sold to Mr. Crawford wheat in store unaccounted for or ought to have been in store 32,891 bushels. The amount that was in store, as reported to me after it was weighed by the person who weighed it, was 13,350 bushels, leaving a shortage of 19,541 bushels. Mr. Crawford relieved me from the respon-

sibility of that wheat, either purchasing it or taking up my receipts and giving his own for it.

(Objection by Weatherford to the answer as hearsay and incompetent.)

378 Q. Did he as a matter of fact purchase that wheat or give his receipts for it and take up yours for that wheat?

A. I know he purchased a large amount of it and to some he gave receipts. How it was all transacted—I am not able to explain every transaction of this matter, but I am well satisfied that satisfaction has been given for it, as no party has claimed anything from me for wheat that was in store there.

Q. You may state whether you paid for or delivered any of that 19,000 bushels of wheat to the farmers yourself.

A. I bought none of this wheat on my own account or with my own money nor delivered any part of it on my own account or for myself.

Q. Did you buy any of it for Mr. Crawford?

A. I think I bought some with his money and for him while I was in his employ. How much I don't remember.

Q. You may state what other notes, if any, Mr. Crawford paid for you besides delivering up to you his own notes and the notes that you gave to William Crawford and the payment of the note to the Bank of British Columbia.

(Objection by Weatherford that the same thing has been gone over once or twice before.)

A. He paid the note to Frank Parton.

Q. If you have that note with you please produce it.

A. Here is the note. (Witness produces a note.)

(Here the master is asked to mark the note last above referred to for identification, and it is marked in blue "16.")

Q. Who executed that note just marked?

A. James H. Foster & Co. and John A. Crawford.

Q. For whose benifit was it executed?

A. For the benifit of J. H. Foster.

Q. What was the consideration of that note?

379 A. The consideration in the first place was money and labor, but that note was given in place of another that was delivered up at the time this was given.

Q. Was Frank Parton your miller for a number of years?

(Objection by Wolverton as immaterial.)

A. He was my miller.

Q. You owed him for money loaned to you and for labor, did you, at the time that note was executed?

A. He had a note signed by J. H. Foster & Co. He delivered that note up and got this note, signed by James H. Foster & Co. and J. A. Crawford.

Q. The question was whether you owed him. Please answer that.
A. I owed him the amount of the note he held.
Q. Did you owe him the full amount of that note marked Exhibit 16 at that time?
A. I owed him the full amount of it.
Q. Who paid that note?
A. I presume Mr. Crawford paid it. He gave it to me. He agreed to pay it, and he delivered the note up to me.
Q. When did he deliver it up to you?
A. A short time ago.

(Here the note last above referred to is offered in evidence and is marked "Defendants' Exhibit 16.")

Q. You may state how much you owed Mr. Crawford on account that went as a part of this consideration for this property.
A. The balance owed to Mr. Crawford on account was $5,803.50.
Q. What was that for, Mr. Foster?
A. It was principally, most all, either for wheat or money or water rent.
Q. Had the account been running long?
380 A. I could not say without examining the book.
Q. Was the account on your mill books?
A. Yes; the account is on the books.
Q. How did you ascertain the amount of wheat that you were short?

(Objection by Weatherford as having been already stated.)

A. By measuring the depth of the bins, by counting the number of square feet of wheat they contained, and taking five cubic feet for four bushels.
Q. That is the way you measured the wheat at first?
A. Yes, sir.
Q. How did you finally ascertain the number of bushels of wheat you were short?
A. Mr. Beam weighed the wheat and reported the amount.
Q. What wheat did he weigh?
A. The wheat that was in store at the time that I turned it over to Mr. Crawford.
Q. Under whose direction did he weigh it?
A. He was employed by Mr. Crawford at the time he weighed it.
Q. Under whose direction did he weigh it, if you remember?
A. I don't.
Q. Did he furnish to you the amount of bushels by actual weight that was then in store?

(Objection by Weatherford as immaterial, he having already sold, as he said, to John A. Crawford.)

A. He furnished the number of pounds that the wheat weighed, as he said.

(Objection by Weatherford to the answer as not responsive to the *answer* and that the answer shows that it was hearsay testimony.)

Q. What date was the wheat weighed?

A. A very few days after the sale.

381 Q. Have you a list of the names of parties who had wheat in store there at that time?

A. I have, I think, a list of all of them.

Q. Will you please produce it?

(Witness complies.)

(Here the master is requested to mark the list for identification, and it is marked "17" in blue pencil.)

A. I would further state that there might possibly be some persons that had wheat—a few bushels—in there for flour that is not in the list, but none that amounts to anything.

Q. Does that list contain all of the names of parties whose wheat was in store or should have been in store at that time?

A. I think it does. I made it out as carefully as I could.

Q. You may state whether it also gives the number of bushels or pounds that each person ought to have stored there.

A. It gives the number of bushels and pounds.

(Here the list above mentioned is offered in evidence and the master is requested to substitute copies, as the original is in evidence in another case now pending in the State circuit court. Said list is received, a copy made and marked "Defendants' Exhibit 17.")

Q. You may state whether or not Mr. Crawford purchased all of that wheat mentioned in that list.

(Objection by Weatherford as having been gone over before.)

A. I could not state that. There may be some of it in store yet that he had given his receipts for. I know of persons holding onto wheat a long time sometimes, but he has relieved me from liability on it.

Q. Was it all purchased or new receipts given for it by Crawford?

(Objection by Weatherford, same as above.)

382 A. I presume it was.

Q. Did you purchase some of the wheat?

(Same objection.)

A. I purchased some of it, but it was with Crawford's money and at his request.

Q. Did you purchase it as his agent?

A. Yes, sir.

Q. Did you purchase any of it with your own money?

A. None of it with my own money.

Q. As soon as the deeds were made out what did you do towards giving Mr. Crawford possession of the property?

A. I told the hands that I had employed there that I had sold out the property to Mr. Crawford, and that I had no more work for them, and Mr. Crawford came down and took possession.

Q. It is claimed by the complainant here that you remained in possession the same as before and managed the business the same. How about that?

A. After I sold that property to Mr. Crawford he said that he had been out of the business for a long time, and he requested me to assist him in conducting the business to some extent and to go on in there and try and have this wheat—what there was in there—ground up and the money appropriated towards purchasing in the wheat that was bought in—what money turned up towards buying that wheat that was out—and to settle up the accounts that there were—some accounts out—and it required some one that knew how to do it, and Mr. Crawford gave me a power of attorney, or something like it, for to go on and attend to this business for him, and I did so.

Q. That was the mill property—in reference to that?

A. The mill property and likewise the accounts.

Q. State whether or not there was many other claims,
383 counter-claims, to your accounts.

A. A great many counter-claims, a great many, and one thing another, that came in contact to be settled up; a great many of this and that that required some one that was pretty well acquainted with it, or else he could not very well do it.

Q. State what you did in reference to the property sold to William Crawford towards turning it over to him.

A. I turned that right over. I had nothing more to do with it.

Q. The property was rented, was it not?

A. All of it rented.

Q. The property was stores and law offices and a hall, was it not? Did you have anything to do about collecting the rents or receiving the rents from that property?

(Objection by Weatherford as leading.)

A. After I sold that property to Mr. Crawford I had nothing more to do with collecting rents. I looked after the property in no way, shape, or manner.

Q. As to the little dwelling-house near the mill that you spoke of, what did you have to do with that after the sale?

A. I had nothing to do with it after the sale. There had been for years a man that lived in that house that was employed in the mill. He never paid any rent. It was just necessary to have him there to be close to the mill, and he just lived in that house, and I turned the property over to Crawford, and the man still continued to live there.

Q. What did you have to do after the sale to Mr. Crawford about collecting the water rents?

A. I don't think I ever went around to collect any water rents unless it happened to be some person that owed some water rent and had an account on the books and there was an of-set made
384 and a settlement made in that way bringing in water rent as an offset, as an account on the books. Some few had ac-

counts of that kind and I might have settled some water rents in that way, but in no other.

Q. Did you do that for yourself or for Mr. Crawford?

A. For Mr. Crawford and no other.

Q. Did you receive any water rents for yourself?

A. I received no water rents on account unless I received it for Mr. Crawford and receipted for it in his name.

Q. After the sale do you know who collected the rents for Mr. Crawford as a general rule?

A. I think Mr. Gray as a general thing has collected the water rents.

Q. Before that who collected it?

A. My son Robert generally collected it.

Q. What did Mr. Crawford do towards taking possession of the mill?

A. Well, he took possession of it.

Q. Well, what did he do—after he got possession of it what did he do?

A. I think he employed the hands to attend to it for him and took the oversight of it and dictated whatever he wanted done about it.

Q. What hands were employed by Crawford to operate the mill or about there?

(Objection by Wolverton as immaterial, &c.)

A. I think Mr. Beam was there.

Q. How long did he remain after the sale?

A. He is there now or was when I came away.

Q. Has he remained there ever since?

A. Yes, sir.

Q. What arrangement, if any, did you make with Mr. Crawford about remaining in the dwelling-house which you occupied at the time of sale?

385 A. After I had sold this property to Mr. Crawford I told him that I would like to remain in the house; that I would like to keep it for a while, and he asked me if I would not just as well have the Drigs house—another house that he had, and I told him that I would rather have that house; that I would rather live there, and he has let me live there ever since.

Q. Well, what did you do about the rents?

A. Well, he never told me what rent he was going to charge me for the house and——

Q. Well, what did you tell him about doing what was right about it, if anything?

A. Well, at the time I told him about renting the house I told him that I was willing to do what was right, so far as was in my power, towards compensating him for the house.

Q. Have you remained in that dwelling-house ever since?

A. I have remained in the house ever since.

Q. What have you paid Mr. Crawford, if anything?

A. I have not directly paid him.

Q. Have you indirectly?

A. To my knowledge I have not paid him.

Q. You may state how long you remained in Mr. Crawford's employ after the sale.

A. Well, I have been in Mr. Crawford's employ ever since the sale.

Q. You may state how you came to remain in his employ after the first year.

(Objection by Weatherford as immaterial.)

A. Well, Mr. Crawford has kept me in his employ. I wished to be in his employ. I requested him to employ me as I had no other particular business, and he has employed me. I had nothing particularly to do by which to make a living and I requested him to keep me in his employ.

386 Q. Mr. William Morgan states in substance that he had a conversation with you in which you said that you wanted to or would rent the mill and pay up your back debts. What do you know about that?

A. I have had several conversations with Mr. Morgan. Mr. Crawford told me at one time that if I could arrange my business so that I could run that mill that he would let me have it to run on very reasonable terms. I may have told Mr. Morgan that if I could arrange my business and there was no interference with me about running the mill I could arrange my business to do so, and might possibly be able to pay a portion of my debts.

Q. Did you hear Mr. Anderson testify in this case?

A. Yes, sir.

Q. State what you said to him about that sale at the time of the conversation which he related.

A. Mr. Anderson must certainly be mistaken in the language that I used the way he interprets that and conveys it. I may state that I never told him or any one else that I had turned that property over to Mr. Crawford for the benefit of creditors or anything of that kind. He certainly misconstrued what I said or else he must have misunderstood me very much, for I never conveyed to any one any such idea as that.

(Here court adjourned until half past nine a. m. to-morrow—Tuesday—to meet at the same place.)

Court convened at the hour appointed and the case continued, Mr. J. H. FOSTER still on the stand in direct examination.

Q. By FLINN:

Q. State whether you had a conversation with Mr. Anderson about a week or two after the sale to Mr. Crawford.

A. I presume I did. I had several conversations with him.

387 Q. Mr. Anderson testifies in this case that you told him in that conversation that you had merely turned the property over for the safety and benefit of your creditors and yourself.

A. Mr. Anderson is certainly mistaken about what I said at that time.

Q. What did you say to him upon that subject, if anything?

A. The first conversation that I remember of having with Mr. Anderson he came into the office and spoke to me respecting my disposing of this property to Mr. Crawford. He held some notes against me and he asked me what was going to be the prospect of my settling those notes. I told him that the situation that I was placed in that I could not settle them at that time, but that if I ever got able to settle them I would be very glad to do it; that I had disposed of this property to Mr. Crawford.

Q. State whether you ever told him, Mr. Anderson, at any time, that you had turned the property over to Mr. Crawford for the safety and benefit of your creditors and for yourself, or words to that effect?

A. I never told Mr. Anderson that I had turned that property over to Mr. Crawford. I told him that I had sold it to Mr. Crawford. I never told him that I had turned it over for the benefit of creditors or myself or any one else.

Q. What was said in that or any conversation about the price of property being low, and that you could not sell it for what it was worth, and about its being sold by the sheriff at a sacrifice?

A. I have no recollection of any such conversation.

Q. What did you say to Mr. Anderson in that conversation about taking wheat and storing it in the ensuing harvest?

A. I may have told Mr. Anderson that Mr. Crawford had made a proposition that if I could arrange my business with those that I owed that he would rent me—lease me—the mill on very rea-
388 sonable terms, and that if I could succeed in making that kind of arrangement that I would continue to do business.

Q. Mr. Anderson, in substance, testifies that you told him at one time that Mr. Crawford wanted to sell the mill, and that your share of the proceeds when it was sold would pay all of your debts. State about that.

A. I may have told him that Mr. Crawford desired to sell the mill, for he said several times to me that he desired to sell it; but as to telling him that I expected to get any of the proceeds out of it I never did, for I certainly had no expectation of getting any of the proceeds in that way.

Q. What conversation did you have with Mr. Anderson about buying wheat of him soon after the sale by you to Mr. Crawford?

A. Mr. Anderson had wheat in store in the warehouse at the time that I sold that property to Mr. Crawford, and he disposed of that wheat at different times. I think I may have purchased some of that wheat from him for Mr. Crawford; I don't particularly remember about that.

Q. Mr. Anderson testified that in a conversation with you after the sale, that you told him that your brick block was bringing you in such a rent, or such an amount of rent, and that your mill property was worth a certain figure, forty or fifty thousand dollars, and that you and Mr. Crawford had the city water works, which you

valued at a large amount, and that you were owner of the mill entirely, and that John A. Crawford had nothing to do with it, and that you had $6,000 in the Santiam ditch, and, consequently, water cost you nothing, and that you had the dwelling-house and the land it stood on; and that you considered yourself worth about $200,000 of real estate. State whether you had any such con-
389 versation with him at any time, either before or after the sale.

A. I don't remember of having such a conversation with him.

Q. Did you have any such conversation with him at the time you gave him the note?

A. I don't think I did. I have no knowledge or recollection of having such a conversation with him. I may have had a conversation with him stating that I owned the mill, and that I had no partners in it, and that I had that brick block.

Q. Did Mr. Anderson ask you what property you had or enquire into that or your affairs at all at the time you gave him your note?

A. I don't recollect, but still he may have.

Q. Were you ever worth $200,000 or $100,000?

A. No, sir; neither one of those amounts.

Q. Was your property that you sold—your interest in the mill and the brick block and the water works, &c.—ever worth $100,000 at any time?

A. It never was worth $100,000, and I would further state that I certainly did not tell him that I had $6,000 in the Santiam ditch, because I certainly had no interest in that ditch after I sold it to Mr. Crawford.

Q. When was it that you sold it to him?

A. I think it was in 1876, and after that I had the water leased of him for which I was to pay him—I think it was $600 a year.

Q. Mr. J. D. Powell testifies that he had a conversation with you on First street, and that you told him that you were short about ten thousand bushels of wheat when you came to measure it, and that Mr. Crawford would buy that in. You may state whether you had a conversation with Mr. Powell at that time and place, and what was said upon that subject.

390 A. I had a conversation, I think, with Mr. Powell as repects my saying that there was ten thousand bushels of wheat. I don't know about that. If I said ten thousand bushels of wheat I was mistaken, because there was more.

Q. He also testifies in the same conversation that you said that the mill would run on as usual, and that you would pay your creditors out of your part of the proceeds—out of your part of the profits. How about that?

A. I have no recollection of any such language being used by me to him.

Q. State whether or not you did or did not use such language?

A. I don't think I did. I certainly would not have used such language because I had no interest in the mill and had not—I could not run the mill because it did not belong to me. I had sold it, and I don't think I—I am well satisfied that he has attached some

wrong meaning to what I said—he certainly misconstrued what I said.

Q. Did you have any interest in the mill after you sold the mill?

A. I had no interest in the mill after I sold it, and if Mr. Powell takes such a meaning as that from what I said he was mistaken, because I had no such intention of saying that.

Q. Did you have any interest in the mill?

A. None whatever.

Q. Was there any understanding or agreement either expressed or implied that you were to retain any interest in the mill or in its operation or in its profits?

(Objected by Wolverton as leading.)

A. At the time I sold the mill I sold it to him absolutely. I made no reservation. I had no rights or privileges in it after it was sold in any way, shape, or manner.

Q. At the time of this conversation with Mr. Powell in what capacity were you then acting?

391 A. I presume that at that time I was attending to overseeing the running of the mill for Mr. Crawford.

Q. Mr. Powell testifies that in that conversation you told him that if you could have been able to have raised $10,000 it would have tided you over.

A. I may have told him that. I thought at the time that if I could have had $10,000 that I might have been able to have tided over, provided the price of produce had advanced, but if it had declined as it did it would have been impossible to have continued in business if I had had $10,000.

Q. Mr. Powell also testified that he had a conversation with you in regard to the Ramsey matter, and that you told him in substance that you would pay that account off as soon as you could; that you had plenty of property, but it was in hands that you could not use it now. What are the facts about that?

A. I had a conversation with him respecting the Ramsey account, the substance of the conversation I don't remember now. I remember I told him that I would, if I could possibly get the money—a small amount, that I would pay something.

Q. Well, what did you say to him about having plenty of property?

A. I think he must have been mistaken about me saying that I had plenty of property, because I did not have property at that time.

Q. You may state whether you had a conversation with Mr. Baltimore in the mill office after the sale.

A. I presume I did.

Q. Mr. Baltimore testifies that in that conversation you told him that if you could get $20,000 you would have been all right; that you had to do something with the property to save it; that

392 the way property was, if it had been sold, it would not have brought much, and that you did not owe a cent below. How about that?

A. I may have told Mr. Baltimore that if I could have got $20,000 that I could have got along. I may have said that if the property had been sold at sheriffs sale that it would not have brought much; but I think—I am very sure he is mistaken about me saying that I did not owe anything below, because I did owe several amounts.

Q. You may state what conversation you had with Mr. Colwell—W. H. Colwell—about your running the mill after the transfer or sale.

A. I remember of having a conversation with Mr. Colwell. I may have told him the same as I told several others; that Mr. Crawford had said that if I could arrange my business satisfactory with my creditors so that I could go on and do business that I could have the mill to run on very reasonable terms.

Q. Mr. John Chiswell testifies that he worked for you after the sale to Mr. Crawford. How is that?

A. After I had made this sale to Mr. Crawford and Crawford had employed me to take charge of the mill for him for the present, it became necessary that we should have some grinding done. As I had had Chiswell employed before I made this transfer to Mr. Crawford—this sale, I spoke to Mr. Chiswell to come and grind or run the mill for a few days, and he came and did it.

Q. Who paid him for this work and whose money was he paid with?

A. I don't remember now how he got his pay, but he was paid with Mr. Crawford's money or with the proceeds out of the mill. I think he got some of both.

Q. Did you have a conversation with Mr. W. H. Goltra after the sale to Crawford about storing wheat? Is so, state what it was.

A. I had a conversation with Mr. Goltra on several subjects. I had one respecting the storing of wheat. I don't really re-
393 member now how I came to learn that Mr. Goltra was desirous of storing a lot of wheat with Mr. Crawford, but I went to Mr. Goltra's, where he was doing business, and we had a conversation about storing wheat. I told him that Mr. Crawford would like to get his wheat to store, and that he would do as well by him as any one would, and he said he would like to store wheat there; that he would have a large amount of wheat to store; that he had considerable of his own, and, besides, that he was taking in a good deal on debts that was owing to him, and he would like to have—he would like to deliver quite an amount of it at the —, out in the railroad at a station out towards Lebanon—I think it was a station handy to his property—and that if he stored his wheat he thought Mr. Crawford had not ought to charge him storage for his wheat. My idea was at that time that he only meant that that belonged to him, and not what he expected to receive on his accounts. I told him that I would speak to Mr. Crawford about that, and see whether he would store for him on those terms; and I spoke to him, and he said that I might tell him that he would store it for him free of storage, and I told him afterwards that Mr. Crawford would not charge him any storage on his wheat.

Q. Mr. Goltra testifies that in that conversation that you re-

marked that the profits of the mill should go to your creditors. How is that?

A. In that conversation I told Mr. Goltra—or Mr. Goltra asked me if I would continue to run the mill. I told him that Mr. Crawford had said that if I could make an arrangement with my creditors, so as I could go on and do business and run that mill, that he said I might have it on very reasonable terms. Mr. Goltra said, "I would like to assist you in making that arrangement, if it
394 could be done." If I told him anything about running the mill it was in that way.

Q. Mr. Goltra also testifies that you were soliciting wheat and business for the mill. You may state whether you were or not; and, if you were, in what capacity you were so doing.

A. Well, when I was—in acting for Mr. Crawford of course I solicited wheat for him, trying to advance his interests as much as I reasonably could.

Q. Who was present at the conversation that you had with Mr. W. H. Goltra?

A. I don't remember who was present.

Q. Did you have a conversation with Mr. Matasce after the sale of the property by you to Crawford?

A. I think I did.

Q. Where was it?

A. I think it was in the office there at the mill.

Q. Mr. Matasce testifies that you told him that you had transfer-ed the property to Crawford to keep from breaking you up, to keep somebody from breaking you up, and that you had shipped about 20,000 or 25,000 barrels of flour to England, and that as soon as that flour got there that you could draw three dollars a barrel on it, and that you could get the rest when the flour was sold, and then you would pay him right away if he did not put you to any expense and let you run the mill in Crawford's name, and that you said you would run it and that somebody below would break you up, would ruin you, and that — had enough to pay every cent you owed if they would not put you to any cost. How about that?

A. I had no such conversation with him.

Q. State what the conversation was that you did have with him.

A. I owed him something and he came to me about it. I
395 told him *him* that I could not pay him at present.

Q. What did you say to him about shipping flour to England and drawing money on it, if anything?

A. I did not say anything like that to him. I had already at that time turned over all my interest in the flour or any flour that I had to Goltra. I had no flour, had no chance to receive any profit like that for flour, and knew very well that there was no such three dollars a barrel coming on the flour. I never used no such language to him.

Q. Did you hear W. C. Morgan testify in this case?

A. I heard him testify.

Q. Did you have the conversation referred to by him with him?

A. I had a conversation with him.

Q. You may state what that conversation was, the one that he refers to, the time, place, and circumstances mentioned by him.

A. I don't remember what his conversation was at that time as given in his deposition.

Q. I have reference to the conversation in regard to the sale of some wheat in the mill office, the sales of wheat that he had stored there in which he claims that you purchased it, but that Crawford paid for it, or that you got the money of Crawford to pay for it.

A. He had wheat stored in the mill at the time of this sale to Mr. Crawford; shortly afterwards he came into the office and he asked me if his wheat was all right. I told him that it was; that he could sell it and get his pay for it; that I had made arrangements with Mr. Crawford to make that wheat good and to buy it in and pay the farmers for it. He asked me if I thought he better sell it then, and I told him that I thought wheat was as good a
396 price then as it would be and if there was any change it would be a decline, and I think that he concluded that he would, if I remember right now, that he would sell, and that he had over a thousand bushels. I told him that if he wished to do so that Mr. Crawford would pay him for it, and I think he sold it down to that amount and got Mr. Crawford's receipts for the thousand bushels that he had left. That is my recollection.

Q. Mr. Morgan claims that you gave him your note for the amount sold, and that Mr. Crawford in a short time, in the course of half an hour, paid it off. What about that?

A. I think he is mistaken about that, about the note; I presume he never read it. I think it was an order to get the money.

Q. An order on Mr. Crawford?

A. Yes, sir.

Q. How long had you been in the milling business?

A. I think it was—I bought the mill from Mr. Crawford in 1867, and continued in that business till February, 1884.

Q. Are you well acquainted with the value of mill property?

A. Yes; I have a very good idea of what milling property ought to be worth.

Q. What was the value of the Magnolia mills, the mill property that you sold to John A. Crawford, at the time of the sale?

A. I think the price he paid for it was about all it was worth and more than it could have been sold for to other parties.

Q. How much was paid for it or counted in the sale?

A. $38,000.

Q. What was the value of the brick building that you sold to John A. Crawford and deeded to William Crawford?

A. $25,000 was what I sold it at.

Q. I asked you what the value was and not what you sold it for. At that time what was it?

397 A. Well, I thought it ought to be worth that amount; it probably would not have brought that amount from outside parties at that time if I had wanted to have sold that property to outside parties. I presume I could not have got to exceed $18,000.

Q. What was the value of the small dwelling-house that was near

the mill, and the ground on which it stands, that you say was occupied by a man kept in the mill, and that you sold to Crawford?

A. I sold it for $500, and I think it was all it was worth. I gave $300 for it when I bought it some years before that.

Q. Had it increased in value?

A. I don't think that property had increased in value in that locality.

Q. What was the value of the dwelling-house that you occupy and which you had occupied at the time you sold it, and the ground that went with it in the deed to Crawford?

A. I sold that to Mr. Crawford for $25,000, and Mrs. Foster did not sign the deed. I think that was a good, fair price for it; more probably than could have been sold for under the circumstances and conditions in which it was sold. I doubt whether it could have been sold for $2,000 at that time.

Q. What was the value of the grain sacks that you turned over and sold to Mr. Crawford at that time?

A. The sacks that were sold to Mr. Crawford were valued at $3,000; they were a lot of old burlap sacks, mostly burlap sacks; there might have been a few sacks mixed in with them. They had been used, most of them for a number of years, and some not so long. I don't know the number of them, but that was a good price for them.

Q. What was the value of the book accounts that you sold and turned over to Mr. Crawford at that time?

398 A. They were valued at $3,000. I think that was the full extent of what they were worth, and more than he will ever realize out of them.

Q. What was the value of your interest in the water works?

A. The interest that I sold him in the water works I sold at $3,000. I had what might have been termed a half interest, but Mr. Crawford had furnished a large amount of money for to build those water works and start them, and in consideration of that I did not consider that I had to exceed $3,000 worth in it.

Q. Do you mean that you had not paid your share?

A. I had not paid my share in the half interest, and then there had been considerable water rents collected that he did not get his half interest out of.

Q. Do you mean that you had collected considerable water rent and had not paid him his half?

A. Yes, sir; and in making these calculations I calculated that $3,000 was a good price for all the interest that I had in them.

Q. Was that squared up—the interest that you had in the water works and in the rents and everything?

(Objection by Wolverton as leading.)

A. Yes, sir; that was squared up—everything.

Q. Will you now please state why it was that you sold out and included in the sale the sacks and the book accounts and the water works as well as the real property? Why did not you retain some of it?

(Objection by Wolverton as immaterial and irrelevant.)

A. In conversation with Mr. Crawford respecting this sale, as I before stated, I told Mr. Crawford that before I made a sale I wanted this short wheat secured. Mr. Crawford had made a calculation about what I owed him and what amounts it would
399 take to purchase this wheat, and he thought it would be a very exorbitant price for this property, and I enumerated the property over that he would get if he entered into this contract, and to induce him to do it I put in all of the property that I had to dispose of, and these were the amounts that I told him that I would let him have if he would agree to comply with the proposition; and he said that he did not like to take so much liabilities on himself at that time, that he would consider it, and along towards evening he told me that he had made up his mind for to take the chances on raising the money, and then we concluded the contract.

Q. You may state whether you have been in the possession, in the use, or enjoyment of the rents and profits in the property sold to Mr. Crawford, except the dwelling-house which you occupy, at any time since the sale.

A. I have had nothing to do with it; exercised no control or received any profits or compensation from any of the property since that sale to Mr. Crawford, except as I before stated. I have lived in the dwelling-house. Mr. Crawford has made some little repairs about putting a roof on a part of the house; the stable or barn, he did a repairing on that.

Q. At the time of the sale or at any other time was there any understanding or agreement, expressed or implied, between yourself and Mr. Crawford or between yourself and Mr. Pearce that they were to hold the property conveyed to them and sold to them for your benefit, or that you should have any interest in the property or its proceeds or its rents or profits in any way?

A. I made no reservation when I sold that property to Mr. Crawford. I sold it to him absolutely. I had no interest; was to receive no benefits or profits out of it in any way, shape, or manner.

400 Q. You may state whether or not you made the sale in good faith.

A. It was the same with Mr. Pearce. I made the sale in good faith.

Foster, J. H., Cross-Examination.

Cross-examination by WOLVERTON, for complainants:

Q. How long did you say you had been in the milling business in Albany?

A. I purchased the mill from Mr. Crawford in 1867 and continued to February, 1884.

Q. From which Crawford did you purchase the mill?

A. I purchased the mill from John A. Crawford, but the deed, if I remember right, was made out by William Crawford; the deed came from William Crawford.

Q. Was William Crawford then holding the mill in trist for John A. Crawford?

A. I could not answer that question.
Q. What did you give for the mill?
A. The price that we were to pay for the mill I think was $16,000.
Q. How much was paid in cash?
A. I think it was $6,000, and gave a mortgage on the mill and same other property, if I remember right, for $10,000.
Q. What other property was included?
A. I won't say positive, but it is my recollection that that brick house that Pearce now owns was included in the mortgage.
Q. How long had you been acquainted with John A. Crawford prior to the purchase of the mill from him?
A. I think I got acquainted with him in the summer of 1851.
Q. Whereabouts?
A. In the mines in California.
Q. How long had you been acquainted with him here in Albany?
A. From the first, when he came there to Albany; I think that he came there in 1853.
Q. Were you in business when he came to Albany?
A. I was in business in Albany when he came there.
401 Q. What business?
A. Mercantile business.
Q. What business were you in at the time you bought the mill or immediately preceeding the time you bought the mill of Crawford?
A. Some time before I bought the mill I had been. I don't remember now how long it was. I sold out my mercantile business, and at the time I bought the mill I was not engaged in any particular business.
Q. You were in the marcantile business in Albany, then, from 1853 up to some time before you bought the mill of John A. Crawford, were you?
A. I was in the mercantile business in Albany from 1852 till—I don't remember the time it was that I sold out, but it was probably about 1864 or '5.
Q. Did you become embarrassed while you were engaged in the mercantile business?

(Objection by Flinn, for defendants, as immaterial, irrelevant, and not cross-examination.)

A. At the time of that big flood I met with a heavy loss that embarrassed me to some extent.
Q. Did Mr. Crawford help you out of that embarrassment?
A. I borrowed some money from Mr. Crawford at that time that helped me out of that embarrassment?
Q. How did you secure Mr. Crawford for the money borrowed?

(Objection by Flinn, same as above.)

A. By a mortgage upon a brick house.
Q. Did you also secure him by a mortgage on your store or goods?

(Objection by Flinn, same as above.)

A. I think not.

Q. What year did you give that mortgage on the brick house in?

(Objection by Flinn, same as above, and also as not the best evidence.)

402 A. I don't remember the exact year, but I think it was the year of the big flood; that was in '61 & '2. Whether it was in 1861 or '2 I could not say.

Q. Is it not true, now, that you turned that stock of goods over to Mr. Crawford absolutely, and that he managed the business for you, paid off your indebtedness to the Portland merchants, and finally turned the goods back to you after he had adjusted your business?

(Objection by Flinn, same as above.)

A. That is not true. Mr. Crawford had nothing to do with my goods whatever. I had no arrangement with him in no way, shape, or manner; only borrowed a certain amount of money from him and gave a mortgage on a brick house.

Q. How much money did you borrow?

A. I think it was $5,000.

Q. Were you clear of indebtedness at the time you bought the mill from Mr. Crawford?

(Objection by Flinn, same as above.)

A. I think I was, without it might have been some small amounts.

Q. You and Mr. Crawford have been very intimate friends ever since your first acquaintance, have you not?

A. We have been friends as far as I know.

Q. He has always been ready to assist you whenever you got into financial difficulties?

A. I never have been in any financial difficulties until I got into this one. Mr. Crawford has always been a very good friend to me.

Q. How many notes were given and included in the mortgage given to secure the 10,000 balance due on the mill.

(Objection by Flinn, same as above, and that the mortgage itself is the best evidence.)

403 A. Five notes of $2,000 each.

Q. Who gave those notes.

A. The notes were signed by James H. and John Foster.

Q. How much had been paid on those notes?

A. The amounts paid on them is endorsed on the notes.

Q. How much is that?

A. I don't remember.

Q. You will please ascertain so that the referee can put it down.

(Objection by Flinn that the notes themselves are in evidence and they are the best evidence, and I instruct the witness that he need no- answer; that he need not hunt up the notes to ascertain.)

The master rules that he may answer the question, and notes marked "Defendants' Exhibit 7" are handed to witness, and he answers:

A. On these five notes that was given at the purchase of the mill—on this first note I find the following endorsement: "Received on the within note $400, July 20th, 1869; received on the within note $1,200, interest to date, July 20th, 1875; received, April 15th, 1881, $400, interest on the within note;" on the second note, "Received on the within note $400 interest, dated July 20th, 1869; received on the within note $1,200 interest, July 20th, 1875; received, April 15th, 1881, $400 on the within note;" and on the third note, "Received on the within note $400, interest to date, July 20th, 1869; received on the within note $1,200, interest to date, July 20th, 1875; received, April 15th, 1881, $400, interest on the within note;" on note four, "Received $400, interest on the within note to date, July 2nd, 1869; received $1,200, interest on the within note to date, July 20th, 1875; received, April 15th, 1881, $400, interest on the within note;" and note five, "Received on the within note $400, interest to date, July 20th, 1869; received $1,200, interest on the within note to date, July 20th, 1875; received, April 15th, 1881, $478.75."

404 Q. Do those amounts include all you have ever paid on those notes?

A. Those amounts include what I paid on those notes.

Q. Do they include all?

A. They include all.

Q. When did you pay the balance of those notes to Mr. Crawford?

A. I took them up by giving him other notes for them and their interest.

Q. Were those notes in existence and unpaid in 1879 & '80?

A. Which notes do you refer to?

Q. The ones you have, that you have been examining, marked "7."

A. I presume they must have been in the possession of Mr. Crawford; they were unpaid by me.

Q. Were they unpaid in the year 1878?

A. There was nothing paid on them in the year 1878 only *the* what is endorsed on the notes.

Q. If they were then in existence and unpaid, state whether or not you made the statement to Mr. John Connor that that mortgage which was made to secure those notes was all paid off and settled, or words to that effect.

A. I have no recollection of making such a statement to John Connor.

Q. Did Mr. Connor call upon you about that time about the condition of your affairs?

A. If he did it has all gone from me. I have no recollection of any such a statement.

Q. Do you undertake to say that you never made any such a statement as that to Mr. Connor?

A. I have never said that I never made such a statement, but I have no recollection of ever making such a statement.

Q. Did Mr. Connor ever call upon you about that time to know of your financial condition?

405 A. Mr. Connor said but little to me respecting my condition, to my recollection.

Q. If you made a statement of that kind to Mr. Connor, it was not true, was it, as a matter of fact?

A. These notes were certainly unpaid at that time; only what they had endorsed on them.

Q. When were those notes taken up?

A. At the time the others were given.

Q. What others?

A. The five notes that was given to William Crawford of $2,000 each and the $6,000 note for the interest that was due on the notes.

Q. How many were there of those notes?

A. There was five notes; six notes altogether.

Q. When were those notes given?

A. I would have to refer to the notes.

(Here six notes attached and designated as "Exhibit 6" are handed to witness.)

A. The notes are dated July 20th, 1883.

Q. Were those notes executed on that date and the others taken up?

A. I presume they was.

Q. Do you know whether they were or not without presuming?

A. Well, that is what I am guided by at present—is the dates on the notes.

Q. I asked you for your own knowledge, regardless of the date on the notes; whether those notes were executed on July 20th, 1883, and signed by you.

A. I could not swear positively from my recollection of the day of the month at that time that it was exactly the 20th day, but that is the date of the notes, and I have no doubt but the notes was calculated to be dated on the day they were given.

406 Q. Could you swear positively that those notes were not executed in August following and dated back?

A. As I before stated, I have to be governed by the date of the notes. My recollection could not extend back to that time and designate the day without something to direct me.

Q. You would not undertake to say, then, that those notes were not dated back when they were executed?

A. I have already stated all I know and can state about that.

Q. Please answer my question.

A. I say the old notes was dated July 20th, 1867—that is, "Exhibit 7." There is a possibility that these notes, Exhibit "6," might have been dated back a few days to correspond with this same July 20th of the old notes, but as to that I have no recollection. I could not positively say anything.

Q. When you say these notes you have reference to the six notes given in lieu of the five notes which were the consideration for the mill?

A. Yes, sir.

Q. What reason have you for dating them back, if there is a possibility that they were dated back?

A. I don't know that I could give any reason positive for that.

Q. Whereabouts were you when you signed the notes contained in Exhibit "6"?

A. I presume that it was done in the mill office.

Q. If you presume it was done there, what makes you think it was?

A. Because the business that was done was generally done there.

Q. Your business or Crawford's business?

A. My business.

Q. Did Mr. Crawford come to your office to procure those six new notes?

A. I think he did.

Q. State now just what was done there and said at that
407 time between you and John A. Crawford or William Crawford, if he was present.

A. Mr. Crawford and me had a conversation about these notes number "7;" in the conversation agreed to take notes from me for that mortgage and reduce the interest to eight per cent., and he would not charge me any interest on the interest that had accrued on the notes, and I agreed to pay the taxes or not take these notes out of my indebtedness, and I executed those notes and delivered them, six of them, in the name of William Crawford, and delivered them to John A. Crawford, and John A. Crawford delivered to me these five notes, Exhibit "7," and agreed to have the mortgage cancelled.

Q. Did he demand the new notes of you, or did you request that he receive new notes of you?

A. In talking about the amount—the payment of the notes—I said to Mr. Crawford: If I had those notes so arranged that there would a note come due every year, one year or two years, and so on, that I thought, if times was any ways favorable, I could meet a note every year, and in that way pay off the debt, and in this conversation he agreed with me that he would arrange it that way, and that I should have that, and these notes are drawn in that way.

Q. Did he speak to you first about rearranging those notes, or did you speak to him first?

A. Well, that would be impossible for me to remember now. It was a good while ago.

Q. You don't remember how that conversation came up, then?

A. No; I don't remember how it came up, really, but I know that was the way it was arranged.

Q. Anything said about paying the taxes on the notes—the new notes?

A. I agreed to pay the taxes on the new notes.

Q. Who had been paying the taxes on the old notes?

A. I had.

Q. How long?

408 A. I think I paid the taxes on them ever since I gave them. I know I have paid on them ever since 1876.

Q. How do you know you have paid on them since 1876?

A. Because I have never taken them out of my indebtedness. I never intended to take them out, and agreed not to take them out, and I firmly believe I never did.

Q. What is the reason you fix that at 1876?

A. That is the time that I bought out John Foster and the time that I made a settlement with Mr. Crawford, giving him—taking up some notes and giving him other notes in the place of them in 1876, before I started East.

Q. Did you pay Mr. Crawford any cash at that time, in 1876—at the time you had a settlement with him?

A. I had considerable of a settlement with him at that time, and I think that he had other notes and other accounts against me; that I paid him some money at that time.

Q. How much is your recollection that you paid him in cash at that time?

A. I could not state the amount exactly.

Q. What is your best recollection about that?

A. Mr. Crawford held several other notes against me that was settled at that time; that I allowed, to-, by turning over to him several notes on other parties and paying him some money, a certain amount, in all amounting to over $20,000, and he delivered up notes enough that he held against me at that time for to amount to that amount with statements on the books.

Q. Give your best recollection as to the amount of cash you paid to Mr. Crawford at that time. Confine your statement to the amount of cash, and give your best judgment as to your recollection.

A. The amount is on the books, and that is the best evidence.

409 (Objection by Flinn, who says: "Refer to the books if you want to; they are here.")

A. I can tell by looking at the books. (Witness consults the books.) The amount of money that was paid to Mr. Crawford at that time was a draft on Allen & Lewis. It was for $4,326; a note turned over to him on Elkins and others for $5,000, with interest on it to the amount of $572.75; another note on Elkins and others for $8,000—Elkins, Looper, and others; John Ganter's name appears there for $2,586.66; and a note on Elkins and others for $1,054.40; another note on Elkins and others for $1,250.40; an order on the Albany & Santiam Ditch Co. for $226.40; and this draft on Allen & Lewis that I spoke of before—in all, making $23,016.57. Mr. Crawford turned over to me a note that he held against me for $13,000 principal and $650.00 on it as interest; another note of $8,000, with $1,366.00 on it as interest, making $23,016. That is the amount of money and business, as respecting the water ditch Co., that was made from Lebanon to Albany, Mr. Crawford loaning these amounts of money to me—the $13,000 and the $8,000—and I lent it to the company.

Here court took a recess till one o'clock.

Court convened at the hour appointed, and the case continued.

Def't J. H. FOSTER still on the stand and questioned by WOLVERTON:

Q. State whether Mr. Crawford loaned the $13,000 and the $8,000 to you and you loaned it to the company.

(Objection by Flinn as immaterial, irrelevant, and not cross-examination.)

A. The company wished me to solicit a loan from Mr. Crawford, and I spoke to Mr. Crawford about loaning money to the company, and he said that he would not loan the money to the company, but if I would give my note for it he would loan the money to me, and if I wanted to loan it to the company I could do so; so I
410 borrowed the money from Mr. Crawford and loaned it to them, giving my note to Mr. Crawford and then giving him those notes that I spoke of.

Q. That was really a transaction, then, between Crawford and the company, you acting as the agent for the company?

A. I don't think that Mr. Crawford considered that he had anything to do with the company. He held me responsible and I held the company on notes belonging to the company that they gave me.

Q. Oh! When you settled up with Mr. Crawford, in 1876, you turned over those notes to Mr. Crawford, and he released you from those notes you gave him?

A. That was the way it was done.

Q. How does it come, then, that you paid him cash at that time? Was that transaction to apply on the ditch notes?

(Objection by Flinn as immaterial, irrelevant, and nor cross-examination.)

A. I presume that I did not let the ditch company have the entire amount of money that I received from Mr. Crawford.

Q. And then you just refunded that amount of money to him, did you, that you had received for the purpose of loaning to the ditch Co.?

A. Mr. Crawford held my note for the $13,000 and its interest and for the $8,000 and its interest, and I wished to pay them notes off and take them up, and I lacked that amount of having notes enough for to amount to it, and I paid that in money.

Q. Was it your intention to hold that transaction separate from your individual transactions between Crawford and yourself?

(Objection by Flinn, same as above.)

A. I think that debt was the same as any other that I owed him.

Q. What else entered into that settlement, in April, 1876, besides the settlement of the interest on the five notes marked "7"?

(Objection by Flinn, same as above.)

411 A. There was not any interest paid on them notes in 1876 at that time.

Q. You testified in substance a while ago that there was an understanding between you and Mr. Crawford in 1876 that you were to pay the taxes on those five notes and that you had a settlement at that time. Have you now stated all that entered into that settlement?

A. At that time I took up, I think it was, three notes that he held against me and gave him two other notes for the amount of them and their interest.

Q. Are those the notes marked "11 & 12" that you refer to?

A. These are the notes that I refer to, marked "11" & "12," that I gave to Mr. Crawford at that time.

Q. What reason had you for giving two notes of the same date and for different amounts; why not have included them all in one note?

A. I know of no particular reason at this time. There was two small notes and interest that I think amounted to $5,025; they were included in one note. There was another note and interest that amounted to $8,605 and that was included in a note. Why it was put in two notes I can't furnish any reason at this time.

Q. What arrangement was made about who should pay the taxes on those notes?

A. I was to pay the taxes on them.

Q. Did you owe those notes at the time Mr. Connor called upon you to give a statement of your financial standing?

A. I owed those notes from the time they was given until I took them up at the time of the sale of the property.

Q. How much interest had been paid on those notes and how much principal?

412 A. The following endorsement appears on the notes: "Received April 27, 1878, $1,056 interest on the within note to date" on the *the* first note. On the second: "Received April 27th, 1878, $1,721 interest on the within note."

Q. Did those payments include all that you paid on them?

A. Those two payments included all that has been paid on those notes.

Q. Who is the owner of those notes now?

A. I took those notes up and paid them off.

Q. When?

A. When I sold the property to Mr. Crawford.

Q. How much were you owing Crawford at the time you sold the property to him?

A. I don't remember now the amount that it all footed up.

Q. Did it amount to any more than the consideration—the price that you fixed upon the property?

A. I don't think that it amounted to as much.

Q. What was done with the difference between the amount you owed him and the amount fixed upon the property?

A. I think, estimating the amount that I had to pay for the wheat, that it amounted to more than the value that was put on the property that he received, but I never made a close calculation of it; or, if I did, I don't remember the precise amount of it.

Q. What do you mean by a close calculation; did not you understand at the time how much you owed him and the value put upon the property?

A. I made a rough calculation of it at the time. I could not tell what it required for the purchase of the wheat that was short.

Q. What was the aggregate amount of indebtedness which you owed to Mr. Crawford, including the amount for which he endorsed for you and the amount paid for taking up wheat receipts

413 which you had issued to divers persons?

A. To ascertain that amount I will have to refer to the notes taken up and to the account.

Q. Refer to said notes and the account and give the aggregate.

A. The amount, as near as I can make it out and I think I am correct, is $64,403.50.

Q. Now, give the aggregate consideration of the property sold to Mr. Crawford, including all of the property sold.

A. I will state that I have no memorandum here of the precise amount; if I make out a statement I must make it out from my best recollection. (Witness proceeds to compute a statement.) The statement that I have made out amounts to $75,000.

Q. How do you account for the discrepancy between the amount of the notes, endorsements, &c., and the aggregate value placed on the property; did Crawford pay you any money?

A. He purchased or agreed to purchase and make good the amount of wheat that was short, that I at the time assumed to be about 20,000 bushels.

Here court adjourned till to-morrow morning, at nine o'clock.

Court convened at the hour appointed, December 22nd, and the case proceeded, defendant FOSTER still on the stand on cross-examination.

(By WEATHERFORD:)

Q. What was wheat worth at the time you sold the property to Crawford, in 1884, Mr. Foster?

A. I don't remember the price I paid for the last lot of wheat I purchased.

Q. Don't you remember the amount you paid the Hurlburt boys for their wheat the day before you sold to Crawford?

A. I purchased the Hurlburt boys' wheat, I remember, a number of days before I sold.

414 Q. What number?

A. I could not say; it was five or six days.

Q. Don't you know it was the day before?

A. I know it was not.

Q. And the night that you gave them, the Hurlburt boys, your note—was not that the night of the fifth day of January, 1884?

(Objection by Flinn as nor cross-examination and as immaterial and irrelevant.)

A. They sold their wheat a number of days before they got the note for it.

Q. What did you give them for their wheat per bushel?

A. I disremember the price.

Q. Do you remember what you gave Mr. Anderson for wheat a few days before?

A. I remember that wheat had been as high as 90 cents, but whether they received that amount or not I could not say.

Q. Did you not give the Hurlburt boys 93 cents?

A. I don't think I did, but I could not say positively what I did give them.

Q. Did not you give them two or three cents more per bushel than the market price would warrant at that time?

(Objection by Flinn as immaterial, irrelevant, and not cross-examination.)

A. I will now state, to the best of my recollection; Mark Hurlburt rode up on a horse to the door of the office one evening and he said he was authorized by his brothers, the Hurlburt boys, as they are called, and, I think, a brother-in-law, to sell their wheat at the market price; whatever it might have been at that time I disremember. I told him all right, and counted it sold at the price that was then named. Wheat declined immediately after that in price. They all, I think, the brothers and, I think, the brother-in-
415 law, and Mark Hurlburt, came into the office together and requested the money for the wheat; I told them that I did not have the money and could not pay them, and I made all the effort that I could at the time to get out of that trade, but they pressed me and proposed to take notes for the amount and I gave them the notes or had the notes given to them.

Q. Now, will you please answer the question, and state when it was you gave the notes?

A. That I could not say.

Q. About when?

A. Well, the note would tell. I can't say, but it was a short time before this transaction.

Q. Was wheat as high at that time as 90 cents a bushel?

A. I don't think wheat was worth 90 cents at the time. I know that it had been higher than at the time that I gave the notes.

Q. Did you not testify in the circuit court of Linn county, before Judge Boise, that you paid as high as 96 cents or 97 per bushel for wheat a short time before you made the assignment to John Crawford?

(Objection by Flinn as immaterial, irrelevant, and not cross-examination.)

A. I prefume I paid that high for wheat. I don't remember what I testified to at that time.

Q. Did you pay that much within a month of the time that you made the assignment to Crawford?

(Objection by Flinn, same as last above.)

A. Wheat that I bought out of the warehouse, the farmers' warehouse and other warehouses, sacked and delivered to me, I paid more than that for it.

Q. Did you pay that much for wheat that was stored in your own warehouse adjoining the mill?

416 A. I have no recollection of paying that much for it; but, as I stated, wheat bought out of other parties' warehouse- I paid more than that.

Q. Wheat was worth about 88 to 92 cents at the time you made the transfer to Crawford, was it not, in that neighborhood?

A. I presume it was.

Q. And you say that you were nearly 20,000 bushels short in your accounts; is that correct?

A. I said my estimate at the time was about 20,000 bushels.

Q. Was that the estimate that you settled on with Crawford at the time you made the transfer?

A. That was the amount that I told him; that I did not think it would be over that amount, but I did not know what the amount was.

Q. And you expected that the difference between 64,000, that you stated in your examination, and the 75,000 that he paid you for the property would pay for this 20,000 bushels of wheat, did you?

A. I put no estimate upon the price of that wheat; I merely expected Crawford for to relieve me from responsibility upon that wheat, either by purchasing it or giving his receipts for it. If wheat should decline before he purchased that wheat it would be to his advantage; if it went up it would be to his loss.

Q. Did you discuss that question at that time with Crawford?

A. We discussed the question that he was to relieve me from all responsibility of that wheat, and that would have been the condition that he was placed in that I have named.

Q. Did he want you to give him any more property than what you did, so as to make him good on moneys that he would have to pay out for this extra wheat or extra price?

A. I don't think he made any demands for any more property from me, to my recollection.

417 Q. He seemed to be satisfied that the property was worth $75,000, if not more, did he not?

A. He appeared to think that he was paying more for the property than it was worth. He expressed that to me, that he thought the mill was placed at a very high price.

Q. Was that his language?

A. I don't remember his exact language, but that was what it amounted to.

Q. In that connection, did he want more property?

A. I don't think he demanded any more property.

Q. Was that—that was the first time that you were ever short in wheat, was it not?

(Objection by Flinn as immaterial and irrelevant.)

A. I could not say as to that. I have not kept a strict account.

Q. And it was brought around by your having made a change in your mill to the roller process?

A. I used more wheat to make a barrel of flour that season than we had ever been accustomed to take for to make a barrel of flour before. What was the particular cause for taking so much I can't positively say.

Q. You attributed it to that cause, I believe, did not you?

A. I attributed it to the cause that the miller had not taken all of the flour out of the wheat that he should have done; but afterward, in conversations with other millers—with Mr. Sibson and Mr. Church, men that had had large amounts of wheat floured—they informed me that their millers had taken more wheat that season to make a barrel of flour than they had done heretofore. They attributed it to there not being so much flour in the wheat as had been in former seasons.

Q. How much did it take that year to make a barrel of
418 flour more than before, according to your estimate?

A. According to my estimate it took over thirty pounds.

Q. How much over thirty pounds?

A. I never tried to remember it. I know it took some over 30 pounds.

Q. As much as thirty-five?

A. I don't remember.

Q. It was not as much as forty?

A. No; I don't think it was as much as that.

Q. How many barrels of flour did you grind after the harvest of 1883, up to the time you transferred your mill to Mr. Crawford?

A. That I could not tell you.

Q. How many barrels did you ship?

A. That I could not tell.

Q. As much as 50,000 barrels?

A. I don't think that much.

Q. As much as 40,000 barrels?

A. I could not say.

Q. As much as 10,000 barrels?

A. Yes; a good deal more than that.

Q. Well, how much?

A. As I before stated, I could not say how many barrels was shipped.

Q. Can you give anything like an estimate of the number of barrels?

A. I would state that there was considerable flour sold in small lots to various parties at various times besides the amount of flour that was shipped. If my recollection serves me right, there were some lots of flour sold to dealers in large lots. Then there was the amount of flour shipped by Sibson, Church & Co. that I have stated.

Q. Now, please answer the question. How much flour did you ship?

A. As I before stated, at the time I made the transfer, I think I had shipped to Sibson, Church & Co. two lots of flour of 10,000 sacks

each, containing a hundred pounds in a sack, and there was in the warehouse in East Portland, I can't positively say how many
419 sacks, but I think as many—something rising—about 15,000 hundred-pound sacks that was held by the Bank of British Columbia, and there was some flour up in the mill.

Q. Were all of the sacks that you referred to in your last answer hundred-pound sacks?

A. Yes; with the exception of that in the mill.

Q. How many barrels would that be that you shipped through Sibson, Church & Co. and had in East Portland?

A. I could not tell without making a calculation.

Q. How many pounds make a barrel?

A. A hundred and ninety-six pounds of flour makes a barrel.

Q. Was that all of the flour that you had shipped during the time from harvest 1883 to the time you made the transfer?

A. I don't remember whether there was any other lots shipped or not.

Q. To whom did you sell any large lots of flour during that same time?

A. I don't know that I could recollect all of the parties; I think there was one lot sold to Balfour, Guthrie & Co.

Q. About how much was in that lot?

A. I disremember.

Q. Well, about how much?

A. I think it was 5,000 barrels, but I am not positive.

Q. Was that all of the large lots you sold?

(Objection by Flinn as immaterial and not cross-examination.)

A. I may have sold other lots, but I don't remember now.

Q. So, altogether, you sold and shipped and manufactured flour to the amount of about 22,000 or 23,000 barrels from the first of harvest 1883 to the transfer to Crawford? Is not that nearly correct?

(Objection by Flinn, same as last above.)

420 A. I could not say how much the amount would be; I know there was quite an amount that was sold; some in small lots to dealers in various parts of the country.

Q. Did you manufacture as much as 30,000 barrels?

A. I should think it would amount to as much as that; I can't say, as I before stated, positively the amount.

Q. Do you think you manufactured more? If so, how much did you, do you think, during that time?

A. I have stated, to the best of my ability, all that I can recollect about this matter.

Q. When did you state it?

A. I stated it in the above statements.

Q. What was your statement in reference to that matter?

(Objection by Flinn, same as above, to all questions asked since the last objection noted, and, further, to the last question that the records is the best evidence.)

Q. What was the statement?
A. I suppose the records will show.
Q. Do you have any recollection as to what it was?

(Objection by Flinn as immaterial and not cross-examination.)

A. I said I could not positively state the amount of flour I did manufacture.
Q. I asked you to give your estimates of the amount of flour that you manufactured between the commencement of harvest 1883 and the day when you transferred the mill to John A. Crawford. Will you please answer that question?

(Objection same as above by Flinn.)

A. As I before stated, I could not give the amount of flour I manufactured in that time.

(Question repeated.)

421 Q. Well, you manufactured between 25,000 and 40,000 barrels. Could you ascertain the exact amount of flour you manufactured during that period?

(Objection by Flinn, same as above.)

A. I could not.
Q. If you lost on a barrel of flour about thirty pounds, and your estimate as the amount that had been used more than you usually used in manufacturing flour was that amount and the amount you were short was 20,000 bushels, the number of barrels of flour that you manufactured would be somewhere in the neighborhood of 40,000 barrels, would it not?

(Objection by Flinn, same as above, and, further, that the question simply involves a mathematical calculation and not any of the facts at issue in this case, and is only based on supposition.)

A. I suppose if the loss was thirty pounds of flour or of wheat to the barrel on 40,000 barrels of flour that it would make 20,000 bushels.
Q. Is that the way you estimate your loss so as to ascertain the number of bushels of wheat that you were short for which Mr. Crawford agreed to stand good for?

(Objection same as above.)

A. I found, as I said before, that I was short according to my estimate 20,000 bushels, which was much more than what I expected, and I attributed it to the miller taking too much wheat to make a barrel of flour, and I did not know how much had been lost in that way. Then, I suppose, now that I had ground more wheat than I had bought.
Q. When did you come to that conclusion that you had ground more wheat than you had bought?
A. I did at the time that I made the estimate and found that I had certainly ground more wheat than I had bought.

422 Q. Did you get paid for all the flour that you manufactured from the beginning of harvest 1883 to the time you sold to Mr. Crawford?

(Objection by Flinn, same as above.)

A. The flour that I shipped and had stored I had received advances on, but it was not sold at the time.

Q. How much did you lose, if anything, on the flour that you sold outright—did not ship?

(Objection by Flinn, same as above.)

A. I could not say as respects that.

Q. Did you lose or make a profit on that that you sold?

A. I could not say.

Q. What did you make or lose on that that was shipped to Sibson, Church & Co.?

(Same objection by Flinn.)

A. I could not say as to that.

Q. Have you any information or idea on that subject?

(Same objection.)

A. I could not say how much the loss was on that.

Q. Was there any loss?

(Same objection by Flinn.)

A. There was a large loss.

Q. How large?

(Same objection.)

A. That I am not able positively to say.

Q. 20,000 bushels?

(Same objection by Flinn.)

A. There must have been at least that.

Q. Was there more?

(Same objection by Flinn.)

A. I could not say.

Q. What did it cost to grind a barrel of flour at that time and have it ready for market in that mill outside of the cost of wheat?

423 (Objection same as above by Flinn.)

A. I could not positively answer that.

Q. Did you ever make an estimate of that?

(Same objection by Flinn.)

A. I don't recollect.

Q. Do you know about what it cost?

(Same objection by Flinn.)

A. I don't think it would cost over fifteen cents.

Q. How much did you owe to the farmers for wheat at the time you made the assignment to Crawford?

A. That I could not answer.

Q. Can you approximate it?

A. No, I can't.

Q. Did it amount to as much as $30,000?

A. I could not say.

Q. Did you owe them anything?

(Same objection by Flinn.)

A. I did.

Q. Can't you give any estimate of the amount?

A. No; I can't at this time.

Q. Did not you owe them more for wheat than you lost on all the wheat that you shipped and sold together?

(Same objection by Flinn.)

A. I could not say as to that.

Q. What became of the money that you received on the sale of the flour, feed, and other produce from your mill?

(Same objection.)

A. It was paid out for wheat and the liabilities or debts I owed.

Q. Who did you pay anything to on liabilities that you owed before the commencement of harvest 1883?

(Same objection by Flinn.)

A. I don't think I could give the names of the parties that I took up my notes from that they held prior to that time. I think
424 the notes I took up amounted to somewhere about $14,000.

Q. Can you name any of those men that held your notes?

(Objection by Flinn, same as several above.)

A. William Goltra for one; I remember him, and I think Mr. Ladd, the banker, and Knox and others.

Q. When did you take up Goltra's note?

(Same objection by Flinn.)

A. I don't remember the date.

Q. Was not that before the harvest of 1883?

(Same objection.)

A. I think not.

Q. Do your books show the amount of money that you have paid out since the beginning of harvest 1883?

(Same objection by Flinn; also the further objection that the books are the best evidence.)

A. I suppose they do.

Q. Will you turn to your books and refer me to that part that shows the amount of money paid out from the beginning of harvest 1883 to the time you sold out to Crawford?

(Same objection as last above.)

A. I was not the bock-keeper; I don't feel myself qualified to explain those books.

Q. I did not ask you to explain them. I asked you to turn to that part which shows the amount of money that you paid out.

(Objection by Flinn, same as above.)

A. The books are here and you can examine them for yourself.

Q. Do you understand those books?

(Same objection by Flinn.)

A. I was not the book-keeper.

Q. Will you now answer my question? Do you understand the books?

(Same objection by Flinn.)

A. I did not keep them books and I don't feel myself qualified for to explain them.

425 Q. Did you understand them so as to transact business by them and to settle accounts with parties in reference to the mill business?

(Same objection as above by Flinn.)

A. I looked over them and done what I could, sometimes, to explain them.

Q. Now please answer my question.

(Same objection by Flinn.)

A. But I don't feel qualified to take them up and go through with an investigation of them. If you desire the books they are here; you can examine them for yourself.

Q. Do you know enough about them to be able to find a statement of the amount of monies you paid out from the commencement of harvest, 1883, to the time that you sold your mill to Mr. Crawford?

(Objection by Flinn, same as above, that it does not appear that there is any such a statement in the books, and you would have to gather it up and make it out from different items.)

A. I don't feel myself qualified to examine the books and make that statement that you ask for. The books are here; you can examine them for yourself.

Q. Did you ever make any entries in the books?

(Objection by Flinn as immaterial, &c.)

A. I have made a few.

Q. You have been in business, mercantile and milling together, since about 1851, carrying on a large and extensive business in Albany, Linn county, have you not?

A. Not since that time.

Q. Well, since when?

A. I mean since the time you named I have. I commenced business in Albany in 1852.

Q. You kept your own books a great portion of the time.

426 A. Generally; always had a book-keeper.

Q. Can you turn to your books and find out the amount of money you paid Goltra that went on the note you referred to a few minutes ago in cross-examination?

A. The books are here; you can examine them for yourself.

Q. You are unable to tell anything about the books, are you?

A. If you want any information from the books examine them yourself.

Q. I ask you if you are able to tell anything about the books; please answer that question.

A. If you wish me—any statements in the books that you wish me to explain—I will do what I can towards explaining them.

Q. Can you explain anything about the books that you might be asked concerning them?

A. As I before stated, I will do what I can towards explaining them.

Q. You are not able to find any of the propositions that you were asked about in reference to the books then?

A. As I before stated, if you want any statement in the books explained show me the statement, and if it is my power to explain it I will do so.

Q. I asked you to explain from your books the time when and the amount of money you paid to William Goltra after the harvest of 1883. Can you do it?

(Objection by Flinn as not cross-examination, irrelevant, immaterial, and not to any issue in this case.)

A. As I before stated, I presume it is on the books, and the books are here, and if you want to see you can examine the books yourself.

Q. Will you explain that matter, if such an entry is made on the books, as to what the payment was for?

(Same objection by Flinn.)

427 A. If it is in my power to do it, I will do it.

Q. Please examine the books and see if you can do it.

(Objection by Flinn, same as above.)

A. As I before stated, the books are here and you can examine them, and any statement that you find in them books and call my attention to if it is in my power to explain it I will do so.

Q. Then you refuse to look at the books to ascertain whether or not you ever made such a payment to William Goltra, as you testified to a few minutes ago, do you?

(Objection same as above by Flinn.)

A. As I before stated, if you want to examine them books you can do so for yourself, and if you call my attention to any statement in them books that you wish me to explain, if it is in my power to do so, I will do it.

Q. Well, can you explain the books or can you not?

(Objection same as above by Flinn, and for the further objection that it does not yet appear that the books need explaining; they have not been offered in evidence, and they are here for the inspection and under a subpœna for the complainant, and up to the present time no books have been identified.)

A. As I before stated, I was not the book-keeper, and I don't consider myself qualified to go through and give an explanation.

Q. Can you tell how much you paid Mr. Ladd, and when it was, after the beginning of harvest, 1883?

(Same objection as above by Flinn.)

A. I don't remember the amount, but I think it was $5,000.

Q. Can you tell when?

(Same objection by Flinn.)

A. I can't tell, but it was after harvest, 1883.

Q. Can you ascertain the time; if so, will you?

(Same objection.)

428 A. The statement ought to be on the books.

Q. Will you please find it if it is on the books?

(Same objection.)

A. The books are here, and if you want to see it you can examine them for yourself.

Q. Do you refuse to look for it or to turn to it?

(Same objection.)

A. As I before stated, if you wish to see it you can examine the books for yourself.

Q. Who else did you pay out any money to that you owed prior to the harvest of 1883—after the commencement of harvest?

(Objection by Flinn, same as above.)

A. As I before stated, I could not remember all of the parties.

Q. How much wheat did you buy from the commencement of harvest, 1883, to the time you sold to Mr. Crawford?

(Same objection by Flinn.)

A. That I could not state.

Q. About how much?

(Same objection.)

A. Well, that would be impossible for me to state.

Q. Is there any way that you can ascertain?

(Same objection.)

A. I suppose the books would show.

Q. Can you find that on the books or find anything else that refers to it?

(Same objection as above by Flinn.)

A. As I stated, I was not the book-keeper, and I don't feel qualified to go on and examine those books and make a statement.

Q. Did you ever see anything on the books in reference to it or in reference to the quantity of wheat there—these amounts that I have just been asking you about?

(Same objection by Flinn.)

A. I have seen statements on the book stating that wheat had been purchased.

Q. Can you find those statements now on the book?

(Same objection.)

429 A. The books are here, and if you want to examine those statements turn to them yourself.

Q. I asked if you could find them on the books. I want an answer, yes or no.

(Same objection by Flinn.)

A. As I stated before, I don't feel qualified for to go on and examine those books and make a statement from them.

Q. I did not ask you to examine them. I asked you if you could find an entry showing the purchase of wheat from them. Can you find it?

(Objection by Flinn, same as above.)

A. I said it would be out of my power for to give the amount of wheat that I purchased, and I don't feel qualified to take the books and ascertain the amount of wheat that I purchased.

Q. I did not ask you to go through the books and ascertain the amount, but I asked you if you can turn to any entry in the books showing the amount that you purchased after the commencement of harvest, 1883.

(Objection by Flinn, same as above.)

A. There were numerous entries, I presume, on the book giving an account of wheat as being purchased, but as I was not the book-keeper, did not keep the books, I don't feel qualified to go into an explanation of them.

Q. As a matter of fact, you did not know anything about them, did you?

(Same objection by Flinn.)

A. I owned and had the books, and I knew I had a book-keeper to attend to them, and I presumed that he kept them correctly.

Q. Did you know anything about them is the question.

(Same objection.)

A. He made all the entries that was made in them, all the transactions that took place, and I depended on him to keep those books and to make the statements from them.

430 Q. Did you know anything about them is the question, and not what your book-keeper did.

(Same objection by Flinn.)

A. As I before stated, I knew I had the books and I knew I had a book-keeper that was attending to them, and I depended on him and had full faith that he kept them correctly.

Q. All you know about it, then, was that you did have some books and had a book-keeper. Is that correct?

(Same objection by Flinn.)

A. As I before stated, I knew I had a book-keeper and I knew I had the books, and I believed that all the business we done was correctly kept on the books. I depended on him to do that business. I may — looked over the books sometimes to see how the business was done.

Q. Did you know enough about it to tell whether the business was done correctly and the books kept as they should be when you looked over them?

(Objection by Flinn, same as above.)

A. I don't profess to be an expert book-keeper, but I can tell when I see a statement made in the books whether it is right or whether the statement corresponds with the right amount set down or whether the right kind of calculation has been made.

Q. Did you ever look over the books to see whether or not the calculation was made or the right amounts set down in the bills payable and bills receivable were correct or incorrect?

(Same objection.)

A. I have looked in the books to see whether the statements made in them was, as I supposed, correct or incorrect.

Q. In that particular?

(Objection same as above by Flynn.)

A. I don't understand what you mean by your question.

Q. You know what is meant by bills payable and bills receivable if it is designated in the books kept by which business is transacted?

431 (Same objection by Flinn.)

A. I presume I do.

Q. Then will you please answer my question?

A. State the question.

(The previous question was read to the witness.)

(Same objection.)

A. I presume I have in circumstances where I wanted to learn a certain amount, whether it had been paid or whether it had been put on the book.

Q. Did you find them correct?

(Same objection as above by Flinn.)

A. I generally found them correct; I have no recollection now of any incorrections.

Q. You dissolved partnership with John Foster in 1876, did you not?

A. Yes, sir.

Q. He retiring from the firm?

A. He retired.

Q. What time was it that you dissolved that year?

A. In the spring.

Q. Did you open a new set of books at that time, after you dissolved with John Foster?

(Objection by Flinn as immaterial, irrelevant, and not cross-examination.)

A. If I remember right, the same set of books was continued.

Q. Any change made in them?

(Same objection as last above.)

A. I don't remember that there was any particular change made; when I purchased from him I purchased all that was on the books and the accounts, &c., that belonged to the mill.

Q. Do you remember the date of your purchase from John Foster?

(Objection by Flinn, same as above.)

A. I don't remember the exact date; it was along in the spring of 1876; I suppose there was a statement made of it on the books, likely.

432 Q. What month, do you remember?

(Same objection by Flinn.)

A. April or May; probably the last of April or first of May.

Q. When did you commence doing business in the name of J. H. Foster & Co.?

(Same objection by Flinn.)

A. I don't remember whether that was done immediately after or whether it was—whether the book was kept immediately after—J. H. Foster or J. H. Foster & Co.

Q. Do you know when you commenced the business in the name of J. H. Foster & Co.?

(Same objection by Flinn.)

A. Well, it might have been immediately; I don't remember about that.

Q. You may look at this book and state what it is, if you know, and then state whether or not the entry made on page 424 of said book, dated April 29, 1876—state in whose handwriting that entry was made and read it to the referee so that he can make a record of it in your answer.

(Here a book is shown to witness, which is marked by the master for identification "P," in blue pencil, on the fly-leaf.)

A. This book is a journal kept by J. H. Foster & Co. until J. H. Foster bought out John Foster, then afterward kept by J. H. Foster. The writing referred to on page 424 was done by me, J. H. Foster. The writing is as follows: "April 29, 1876. This book is now opened in the name and interest of J. H. Foster; the firm of J. H. Foster & Co. is now dissolved by mutual consent of both parties."

Q. From that time on you run the business in the name of J. H. Foster, did you?

A. The interest—the business was transacted and done by J. H. Foster. I can't positively state the time when the name of J. H. Foster & Co. was adopted and used, but I think it was soon after the purchase was made from John Foster.

433 Q. Was not a good portion of this journal you have referred to kept in your handwriting?

A. There may be occasionally an entry made by me, but I presumed to take no control of the books.

Q. Who was your book-keeper during the time that that book was in use?

A. I notice considerable, and a great majority of the handwriting here in this book appears to have been made by Frank Parton; Robert Foster may have done some writing in it.

Q. Did you commence business at that time in your own name?

A. I assumed the liabilities that was then outstanding of the firm of J. H. Foster & Co., and made a memorandum of the amounts that I had assumed that was payable by the firm. I assumed all of the liabilities of the firm.

(Here an objection is interposed to the last above question by Flinn as immaterial, irrelevant, and not cross-examination.)

Q. Was there any memorandum made of it on the books?

A. I don't think there was any memorandum recorded of it in the books, the amount that I assumed at that time.

Q. Was there any other made at that time, whether in the books of the mill or some other paper?

A. I think there was a calculation made of the amount of indebtedness, but what that amount was I disremember now; but there was not, to my knowledge, any record made of it. I merely assumed all liabilities of the firm. He was to be relieved from any responsibility of the indebtedness that was owed by the firm.

Q. Do you know where the calculation that you made at that time is?

A. I have no knowledge where the calculation is; I have never seen it for many years.

434 Q. Was any mortgages or deeds or notes passed between you at that time that would show anything in reference to the indebtedness and what you assumed?

A. I have no knowledge of anything besides these notes to Mr. Crawford that was not paid at that time.

(1. See addenda at the end of this deposition for an addition made to the last above answer.)

That is, referring to the notes, only what was endorsed on them at that time—that is, the notes due to Mr. William Crawford and the amount of them two notes that he had that was given in the place of the three notes that was signed by J. H. Foster & Co. They was the indebtedness at that time that I assumed.

Q. Were they talked over between you and John Foster at that time?

A. They was; and I agreed to take up his notes and give my own in the place of them—that is, the three notes. The mortgage that was on the property was to remain.

Q. Was that the contract between you and John Foster and between you and John Crawford?

A. I was speaking of the contract between John Foster and me.

Here court took a recess until half past one o'clock.

Court convened at the hour appointed, and the case proceeded, defendant FOSTER still on the stand.

Cross-examination continued:

Q. How soon after the dissolution between yourself and John Foster did you have a settlement with John A. Crawford?

A. I think very soon after. We transacted quite an amount of business. Whether we settled up everything, small book accounts, &c., I am not positive. Respecting the notes, we had a settlement.

Q. How much were you owing him at that time?

A. At the time we made the settlement and he delivered
435 up the notes—them old notes—and I his'en—them two new notes—for what was back or what was coming to him, and the notes that he delivered up to me. I don't remember now about any accounts that was on the book.

Q. Did this settlement include the notes of William Crawford?

A. It did not have reference to the notes of William.

Q. Were those notes brought into account or talked about in any settlement between you and either of the Crawfords prior to 1883?

A. I remember of telling Mr. Crawford at that time that if he would allow them two notes to run on that I would pay the taxes on them.

Q. When was that?

A. That was in 1876, about the time I gave him them two notes.

Q. Who was present?

A. I could not say who was present.

Q. Where was it?

A. I think it was in the mill.

Q. Which of the Crawfords were you talking to at that time?

A. John A. Crawford.

Q. Did he transact the business for William Crawford?

A. That was always my understanding.

Q. You did your business in reference to that mortgage on the notes they were secured by with John A. Crawford, did you?

A. My business was done with John A. Crawford respecting his own and William's.

Q. When you bought the mill you did the business with John A. Crawford instead of William, did not you?

A. It was done with John A., but, as I stated before, the deed was given by William.

Q. When was the next conversation you had, now, with Mr. Crawford about these notes after the one that you spoke of in 1876 with John A. Crawford?

A. That would be impossible for me to say. I have no recollection.

436 Q. Did you see those notes again before 1883, or either of them?

A. I am not positive about that—whether the notes was present at the time the interest was paid on them or not. I presume likely they was.

Q. During the time that you were in business last did you at any time make more than your running expenses?

(Objection by Flinn as not cross-examination and as immaterial and irrelevant.)

A. Some years I made a very nice profit and some years I met with very heavy losses.

Q. Did you use any of the money that you made for the purpose of paying John or William Crawford?

A. I suppose what money was paid to them came out of the money belonging to the mill business and some other sources that I may have had coming to me.

Q. What other sources did you have?

A. I had some rents.

Q. About how much rents did you have after 1876?

A. That would be impossible for me to tell.

Q. Did you have the money to build the brick block in Albany refer-ed to in this testimony?

A. I built that brick block and borrowed the money. Probably I had some at the time that I took out of the business and invested in it.

Q. Who did you borow that money of?

A. I could not say positively who all of the parties might have been. I remember of borrowing $3,000 of Mr. Crawford at that time.

Q. What was the date of that loan from Mr. Crawford?

A. If I had the note I could tell.

437 Q. Was it one of the notes offered in evidence?

A. Yes; it was.

Q. From what other parties did you borrow money?

A. I could not tell now whether I borrowed any from Mr. Anderson at that time or not or old Mr. Baltimore. It runs in my mind that I did, but I am not positive.

Q. Did you own an interest in the Santiam Ditch Co.?

A. I once did.

Q. When did you dispose of your interest?

A. My interest—I took $3,000 of stock in the Santiam Co. when it was built. When the ditch was sold to Mr. Crawford it was sold for the indebtedness that was against it, and I lost my $3,000 in the transaction. It only brought enough for to pay for the indebtedness.

Q. Who got that ditch?

A. The ditch was sold at public auction, and John A. Crawford bid it in.

Q. What interest did you have in it after that?

A. I never had any interest whatever after that.

Q. Did you tell George Simpson that you had $6,000 in it?

A. I did not.

Q. Did you tell Mr. Anderson, who testified in this case, that you had a large interest in the ditch?

A. I never told any one that I had an interest in it.

Q. Those men were mistaken, then?

A. Those men were mistaken, because I never had any interest in it after I had sold it.

Q. You built the Albany water works, did not you?

A. I had. I went in with Mr. Crawford to construct the Albany water works.

438 Q. How much money did you invest in that enterprise?

A. I could not state positively how much money I did invest in it.

Q. Was that borrowed, too?

A. I had borrowed money on hand at the time I built the water works. Whether I borrowed money expressly for that I could not say.

Q. How much did you invest in that?

A. When I disposed of those water works to Mr. Crawford the best calculation that I could make was that I ought to have $3,000 for what interest I had in it, and he paid me that amount or allowed me for it.

Q. Did you invest that much in the works in the first place?

A. I think I did.

Q. Did not you invest more than that?

A. I could not say about that. My opinion now is that I had collected or it was charged to me, a good deal of water rent—that is, his interest had not been turned over to him.

Q. Were you in the habit of borrowing money and letting it run for seven or eight years without making any payments more than to pay the interest?

(Objection by Flinn as irrelevant, immaterial, and not cross-examination.)

A. I was from Mr. Crawford. I don't remember of any other persons.

Q. Did he ever call on you for the payment of those notes given in 1876 before 1883?

A. I don't think he ever demanded the principal. My recollection is——

Q. Did he ever demand payment of all of the interest due?

A. He demanded the interest of me several times. He never pressed me.

439 Q. When did you pay the last on those notes?

A. The amount is endorsed upon the notes; I can't tell without looking at them.

Q. Was the full amount of interest paid at the time it was paid?

A. I could not tell.

Q. Did William Crawford ever demand payment of the mortgage notes?

A. I have no recollection of William Crawford ever demanding payment.

Q. Did John Crawford for him?

A. He called on me for the interest and I paid some; but that he ever demanded the principal of them in money I don't remember.

Q. They just let it run along without anything being said about it for a long number of years?

A. They was very lenient with me; never pressed me concerning them.

Q. Did not you pay without being pressed?

A. What I mean by being pressed, they never urged on me for money.

Q. They did not even speak to you about it?

A. If they did, it was universally met.

Q. And you did not pay voluntarily except they called for it?

A. I may; I had talked to Mr. Crawford sometimes about them notes.

Q. You did not think enough about them to put them in your list of bills payable and receivable, did you, on your books?

A. The mill notes—the mortgage notes was given at the time we bought the mill, and there was no entry made respecting that; had no books on hand at that time, and the two other notes was given in lieu of the other notes, and there was no record, to my knowledge, of them.

440 Q. Did you make any record of them in 1883 on your books, when you gave the new notes that you now claim you gave for the mortgage notes?

A. I think there was no record made of it; I think they were just made and delivered over to Mr. Crawford and he delivered up the other notes.

Q. Any record made of the other notes, the $8,000 and the $5,000 and the $3,000, that have been offered in evidence?

A. I could not say.

Q. Don't you know that there was no record made of them?

A. That is my opinion, that there were not.

Q. Is it not true that you made a record of all the other notes that

you have given on your books up to the day before you made the assignment to Crawford of your property?

A. I am not positive as respects that; it was generally intended for to keep a record of the notes.

Q. Would you have any objection to examining the books and see if they are recorded in the bills payable and receivable?

A. What notes are you referring to now?

Q. The $8,000 and the $5,000 and the $3,000, marked "10, 11, & 12," heretofore offered in evidence in this case.

(Objection by Flinn that the books themselves are the best evidence.)

A. I am not positive about the $3,000 note, but I don't think those marked "11 & 12" that there is any record made of them at the time they was given; I am not positive about the "10."

Q. Did you charge them or make any minute of them on Crawford's account?

(Objection by Flinn, same as above.)

A. As I before stated, they was given in the place of other
441 notes that was taken up, and, as I before stated, there was no record made of those notes.

Q. You kept account of the notes that you had given to Mr. Conner and other persons with whom you did business in Albany in your books, did you not, at that time?

A. That was the calculation, and I presume we did.

Q. When you gave the note marked "12" were you still in partnership with John Foster?

A. I was not.

Q. When you gave the note marked "11" were you still in partnership?

A. I was not.

Q. How long had the partnership been dissolved at that time?

A. I could not say, but I think but a short time.

Q. You were then doing business for yourself and had been—had opened books of your own—had not you?

A. That is my recollection.

Q. But you made no mention of those notes on the books?

A. I don't think there was any record made of them.

Q. You did have other transactions about that date, did you not?

A. There was other transactions about the same time that there was a record made of.

Q. I see the last date that the interest or any payments was made as marked on either of the notes numbered "11 & 12" is April 27th, 1878. Was any payment demanded of you after that time up to the 6th day of February, 1884, by Mr. Crawford, or did you pay any interest or principal from that time up to the 6th of February, 1884?

A. I have no recollection of Mr. Crawford demanding payment from me on the notes.

Q. You were building large brick blocks, water works, and doing

a large business in the milling line and had funds with which to transact all the business and yet you pretend to say that you
442 did not pay the interest or any portion of it that was due upon those two notes marked "11 & 12," did you, for the space of six years?

(Objection by Flinn, because it is put by way of argument, and it is improper for the counsel to undertake to argue the case to the witness.)

A. The amount that I paid on them notes is endorsed on them.

Q. And this $3,000.00 note, marked "10," which was given the 12th of September, 1878, has no payments on it at all, has it?

A. No payments was made on that note.

Q. And you borrowed that $3,000.00 of Mr. Crawford when you were owing him one note of $8,600.00 and one marked "11" and the one marked "12," with interest thereon for some time and unpaid, and the $10,000.00 or notes secured by a mortgage, and a large amount of interest unpaid on that, without making any suggestions to him or him to you as to the propriety of paying up the interest due from you to Crawford, did you?

A. I borrowed the money—the amount stated in that note—from Mr. Crawford at the time the note was given. As for any conversation respecting what I owed him I have no recollection or knowledge as to anything being said about it.

Q. Did you do business with other parties the same way that you did with Mr. Crawford about paying interest?

(Objection by Flinn as not cross-examination, immaterial, and irrelevant.)

A. Mr. Crawford was more accommodating to me respecting the paying of interest than any other party I done business with.

Q. Did you charge Mr. Crawford on your books, did you not, with the payments of little notes that you made to him after you commenced doing business by yourself?

443 A. I think it was about the time that I gave him these two notes marked "11 & 12" that I took up two other notes that he held against me amounting, notes and interest, to $23,000.

Q. You made a memorandum of that transaction, did you, upon the books?

A. That transaction is recorded on the books.

Q. Is that about the date you issued these notes?

A. I think it was about that time.

Q. All the transactions that you had with Mr. Crawford after that did you put on the books?

A. I could not say as to that.

Q. When did you have the next conversation or transaction with Mr. Crawford in reference to those three notes marked "10, 11, & 12" after the time that the interest is marked on the book?

A. I have no recollection now of having any special conversation with Mr. Crawford respecting these notes until a short time before I made this sale to him.

Q. When was it?

A. The sale was made, I think, if I remember right, about the sixth of February, 1884.

Q. When did you first talk with Mr. Crawford about making the sale?

A. I think it was but a very few days before I made it.

Q. Before you came to Portland to see McCraken and others about borrowing money?

A. It was after that.

Q. Where was it?

A. I think it was in the mill office.

Q. Who was present?

A. I don't think there was any person present the first conversation we had.

444 Q. Where was the second conversation?

A. In the mill office.

Q. Who was present at that?

A. I don't remember of any person present; I don't think there was.

Q. How long was that before the sale?

A. I am not sure whether it was on the day before the sale; whether it was the day before or the day that I made the sale I am not sure.

Q. Did you make the sale the day the deeds were made?

A. That was the day we consummated the sale.

Q. Who was present at the time of the second conversation?

A. There was no person present at the time we talked it over nor the time the sale was made.

Q. John Crawford or William Crawford?

A. I made the sale of John Crawford.

Q. Did you examine your accounts to see whether, to ascertain how you stood; you and Mr. Crawford?

A. I made a calculation about what the amount of them was.

Q. Did you have those three notes present marked "10, 11, & 12"?

A. I think Mr. Crawford took a piece of paper and had the amounts set down on it that he said the notes and interest amounted to. I don't think the notes was present, to my recollection.

Q. What time of day did you have that conversation?

A. My opinion now is that it was in the forepart of the day that we talked that over particulary.

Q. When did you have the next conversation, if you had any more?

A. My recollection now is that it was not till the after part of the day that Mr. Crawford told me positively that he would take the property and comply with the proposition that I had made to him.

445 Q. The after part of the sixth of February?

A. Well, I would not be positive about the day being the sixth day of February, but that is what I would have to go by—the day the deeds was made out.

Q. Well, was it the day the deeds were made out?

A. That is my recollection.

Q. How late in the day was it?

A. Well, I could not exactly say; my mind was very much occupied and I could not tell exactly.

Q. Was it during business hours and were you doing business with persons coming in and out?

A. I presume I was.

Q. Can you remember any person that came in during the time you and Mr. Crawford were talking?

A. I don't remember of any person that came in at the time; it had begun to get dusk. My recollection now is that it was late in the afternoon.

Q. Where did you next meet him after that on this business?

A. After we had completed the contract and concluded to have the conveyances made I went up to my house, and my wife and me came down to Judge Strahan's house, as he was going to make out the papers, and I think there was the next place that I saw Mr. Crawford.

Q. What time of night did you go to Judge Strahan's house?

A. I think it was very near dark.

Q. Had you eaten your supper?

A. I don't remember as to that.

Q. Who did you find at Strahan's when you arrived there?

A. I think Mr. Strahan was the first person I saw there. My recollection is now that Judge Strahan was lying on the bed. He said he had been very unwell that afternoon.

Q. I did not ask you what Judge Strahan was doing. I asked you who you found there?

A. I found Judge Strahan and his wife—those two.

446 Q. How long after before Crawford came there?

A. I don't knew how long it was.

Q. Which one—William or John A.?

A. I don't remember of William being there; John was there.

Q. Who do you remember of being there besides yourself and wife?

A. Before the business was finished my son Robert came in. I am not certain whether James came or not; it appears to me he did.

Q. What interest did they have in it?

A. I could not say what particular interest they might have had in it. I suppose they felt interested in the business, although there was not positively any necessity of their being there.

Q. What time of night did you get through and leave Strahan's house?

A. I could not say positively what time of night it was, but I know it was a little on the late order when we got home.

Q. Twelve o'clock?

A. No; I don't think it was that late.

Q. Eleven?

A. I could not say about that; I don't think it was.

Q. Half past ten?

A. Well, as I said before, it would be impossible for me to say. I know it was late by the time he got the papers made out and they were signed.

Q. What papers did he make out?

A. The deeds for the property.

Q. How many?

A. (2) (see addenda at the end of this deposition); a deed for the mill, for the brick block, the dwelling house—the little house down by the mill. I think they were all the deeds.

Q. Was there a separate deed for each piece of property?

A. I think there was.

Q. Are you positive of that?

447 A. That is my recollection now, that there was a deed for each piece of property.

Q. What papers did Crawford execute to you? Name all of them.

A. My recollection is now that he gave an obligation or a note for a certain amount as security that he would purchase that wheat. It was to be deposited in a certain place and held, and, when he purchased the wheat, to be delivered to him again.

Q. What kind of an obligation was that?

A. I could not say positively how it was written. Judge Strahan wrote it, but I think it was in the nature of a note.

Q. Where was it to be deposited?

A. I think it was to be deposited with Dr. Gray.

Q. Was it deposited with him?

A. It was.

Q. Who put it there?

A. I did.

Q. When?

A. I could not say positively, but I think it was the next day.

Q. Did you look at it and read it?

A. I did.

Q. How much did it call for?

A. My opinion now is that it was $10,000.

Q. Just a plain note for $10,000?

A. I can't say now.

Q. One day after date or for a certain time?

A. I could not say.

Q. How long did you hold that note, or Dr. Gray hold it?

A. That I could not say. I know I went and got it and gave it to Mr. Crawford.

Q. Well, about how long? Give it as near as you can.

A. Well, my recollection—I can't tell.

Q. Six months?

A. I think it was delivered to Crawford inside of six months.

Q. Do you think Gray held it as long as three months?

448 A. I could not say.

Q. Did he hold it as long as ten days?

A. Well, I know he held it a good deal longer than that.

Q. Do you think it was as long as two months?

A. Well, I suppose he did.
Q. You think it was that long?
A. I suppose it was.
Q. What did you do with it after you got it from Mr. Gray?
A. I handed it to Mr. Crawford.
Q. How long after you got it?
A. I think I went right up and gave it to him.
Q. The same day?
A. That is my recollection of it.
Q. What did you tell Gray when you gave him the note?
A. I just told him what the arrangement was; that Mr. Crawford was to buy up that wheat, and when he bought that wheat he was to receive that note or obligation, or when he relieved me from responsibility for the wheat; and if he did not do that that obligation was binding, as Strahan said, on him (Crawford) to me.
Q. Why did not you hold that obligation yourself?
A. Judge Strahan told me before the obligation was given the arrangement was made as to what should be done with it.
Q. When did he tell you that; what day?
A. I said that before that obligation of Mr. Crawford's was given by him the arrangement was that it was to be deposited with Dr. Gray and to be held by him, and when Crawford complied with purchasing or relieving me from responsibility for that wheat the obligation was then to be delivered to him.
Q. I asked you when Judge Strahan told you that?
A. At the time he was making it out.
Q. You became convinced, then, in about two months that
449 Crawford had purchased all the wheat that you had receipts outstanding for, did you?
A. At the time I got the obligation and gave it to him I was satisfied that I was relieved from all responsibility for the wheat.
Q. How did you become satisfied; what satisfied you?
A. From the amount that I understood that he had purchased or given his receipt for.
Q. From whom did you understand that?
A. I seen a record in the book that was kept there.
Q. Who showed you the record?
A. I looked at it myself.
Q. Whose record was it?
A. I suppose it was Mr. Crawford's.
Q. Who made it?
A. I could not say positively who made it.
Q. How did you know it was a record?
A. I could tell by the looks.
Q. And you understand Mr. Crawford's books when you say you can't understand your own?
A. I could understand when I looked at it; when it said he had purchased wheat from parties.
Q. Did Mr. Crawford deliver you receipts for that wheat at that time?

A. He delivered me quite an amount of receipts; I don't remember the full amount, though.

Q. At that time I mean?

A. I don't think he did at that time—the time I handed him the obligation; he had before.

Q. This list that you introduced in evidence in direct examination, had he delivered to you the receipts from those parties named on that list?

A. I would not positively say as to that.

Q. Do you know how much in the aggregate the receipts called for that he delivered to you before you delivered the obligation to him?

450 A. I do not.

Q. As much as 25,000 bushels?

A. I could not say the amount at all. I know I was satisfied at the time I delivered the obligation to him that Crawford had and would relieve me from all responsibility for that wheat.

Q. Who is Dr. Gray, a relative of yours?

A. Yes, sir; he is a brother-in-law of mine.

Q. What particular motive did you have for being in such a hurry to make the deeds to Mr. Crawford as to go down to Judge Strahan's house after night and remain there a great portion of the night in making out the deeds?

A. I had sold the property to him and he requested me to make deeds for it, and it suited me just as well to do it then as any time.

Q. Was that the only reason?

A. Well, I thought it was just as well for to make them to him then as any time. I could do it then, the condition I was placed in.

Q. There was no other reason, was there?

A. He required me to make those deeds to him provided he complied with what I asked for, and I could do it then.

Q. I asked you if there was any other reasons for going down to Strahan's house that night and remaining a good portion of the night to make the deeds.

A. I owed other parties; I did not know what they would do about this matter; and, as I stated before, I could make the deeds then and secure this wheat, and I concluded to do so. My great object was to secure the purchase of that wheat, and I could not rest contented until I had made arrangements for its purchase and to relieve me.

451 Q. You did not care about securing Crawford, but to secure yourself?

A. The purchasing of that wheat was the great object—the strongest motive I had.

Q. Why did not you use some of the money that you had received for flour for paying for that wheat?

A. I had already paid out all the money I had.

Q. You had already received about 13 or $14,000 that fall for flour, had you not?

A. I could not tell exactly how much I did receive, but I know

positively that I had no money on hand at that time to buy that short wheat with.

Q. What had become of that 13 or $14,000 when you owed 13 or $14,000 for wheat that you had purchased after harvest, 1883?

A. I paid out all the money that I had.

Q. Did not what you owed the farmers for wheat more than cover all the loss that you had incurred for short wheat?

A. I don't think it did.

Q. The highest price paid for wheat at any time during that fall was about 95 cents, was it not?

A. I could not state what was the highest price paid for wheat that fall.

Q. Did it run to a dollar per bushel after the harvest of 1883 before you sold to Crawford?

A. I could not say as respects that. If there was any bought as high as that it was that that was bought out of other warehouses.

Q. And in small amounts?

A. I could not say as to the amounts.

Q. You did not buy any large amounts, did you?

A. I could not say how large an amount I did buy from the farmers' warehouse and from Halsey.

452 Q. Is it not true that the feed, bran, and shorts from the mill would more than pay all the running expenses of the mill and the grinding of the flour?

A. I presume it would.

Q. So the flour, then, was a net. You received for it what it brought in the market clean and clear of all expenses in manufacturing it into flour, and all the cost you were to*o* was the cost of the wheat alone. Is not that true?

A. It all required sacks to put it in and it required freight to send it to market and some other expenses.

Q. How much did you receive for feed of various kinds from the first of harvest, 1883, to the time you sold to Crawford?

A. That would be impossible for me to tell you.

Q. Did you receive as much as $5,000?

A. I could not tell.

Q. $4,000?

A. As I before stated, it would be impossible for me to tell what was received.

Q. Well, what did you do the next morning after you sold to Crawford?

A. My recollection is that Mr. Crawford took possession of the property the next morning.

Q. Were you down at the mill?

A. I was.

Q. In the office?

A. Yes.

Q. Did you stay there all day as usual?

A. I am not positive; I presume I did.

Q. Did you collect any accounts that day?

A. I could not say.

Q. Did you buy any wheat that day?

A. I could not say how it was respecting that. I know that in a few days after that there was a large amount of wheat purchased.

Q. Who bought it, you?

A. I was there; Mr. Crawford was there.

Q. All the time?

453 A. I think he was there all the time. He was the purchaser of it.

Q. Do you know Jim Dyer?

A. I do.

Q. Did you buy his wheat?

A. I could not say; very likely I may have bought it.

Q. Did you buy his wheat and take the money out of your own pocket and pay him for it?

A. No, sir; I may have bought his wheat and paid him for it. If I did it was with Crawford's money.

Q. Did you have Crawford's money in your pocket?

A. I might. If I paid him the money it was Crawford's money. I was doing business for Crawford at that time.

Q. When did you?

A. My opinion is now—I will say that after I delivered up the deeds to Mr. Crawford, made those deeds and the other conveyances that was made by Mr. Strahan, he said to me that he would like to have me attend to this business for a time—attend to this business; don't know that he mentioned any; that he had been out of the business for a long time, and he would like to have me attend to it for him, and Judge Strahan wrote a power of attorney of some description authorizing me to go on and attend to this business for Mr. Crawford, and I think it was to sign his name to contracts.

Q. Did you and Mr. Crawford talk this matter over before you went to Strahan's house?

A. No, sir; he never said anything to me respecting that until after he bought the property.

Q. Where is that power of attorney?

A. I could not say where it is; it was present at the former trial. Whether it is there now——

Q. Did you proceed under that power of attorney the next morning?

A. I proceeded under that power of attorney to attend to
454 the business for Mr. Crawford.

Q. Did you have full charge of the property?

A. Under his control.

Q. If you were only a clerk why did you need a power of attorney?

A. I could not tell you why it was. It was Strahan's dictation.

Q. Did you ever give any of your clerks a power of attorney to transact business for you about the mill?

A. I never did.

Q. Did you ever know anybody that did in doing business about Albany?

(Objection by Flinn as immaterial, irrelevant, and not cross-examination.)

A. I could not tell about what other folks did in their business; I never enquired of any; I don't know; can't say positively that this was a power of attorney; I don't know what you might call it.

Q. Was that what Strahan called it?

A. I don't remember.

Q. You remember among its terms that it authorized you to sign his name?

A. Yes, sir.

Q. Did it authorize you to collect money for him?

A. Yes, sir.

Q. Did you collect water rents under it?

A. No, sir; without it was a few accounts from some of the parties that had business in the mill accounts.

Q. You staid there in the office and collected up the accounts?

A. Yes, sir.

Q. How much was Crawford to give you for that as a rule?

A. I think I have received something like $75.00 a month.

Q. Did you make a bargain that night as to what you were to have before the power of attorney was drawn?

A. I don't remember now that there was anything said that night, but afterwards there was an agreement that I was to get $75.00.

Q. Was anything at all said about it that night?

455 A. I don't remember that there was.

Q. When did you have a conversation as to what you were to receive?

A. I don't remember now; it was before the month was up.

Q. Did he pay you the money?

A. He has paid me the money sometimes, and sometimes he did not. I got it in other ways.

Q. How did you get it?

A. I have received it from Lorenzo Gray, the man who collects the water rents and other rents.

Q. Did you go to the drawer and help yourself?

A. No, sir; he handed it to me.

Q. From the water rents?

A. I don't know where it came from.

Q. Who collected other moneys that came into the office? Did not you take your salary out of that in the place of going to Gray?

A. The money that I collected on them accounts as a general thing was all paid out on the wheat.

Q. You could not save $75.00 a month out of it on your salary?

A. I suppose I could have done it; but I have told you how it was.

Q. Did you always receive $75.00 a month?

A. I don't think it was always $75.00; but it was never over $75.00.

Q. Did you give receipts for it?

A. No, sir.

Q. Did Crawford keep an account of it?

A. I don't know about that.

Q. Was you not there in the office and had charge of the books in settling up his accounts?

A. I don't think I did.

Q. Did you make an account of it on your books?

A. No; I never made an account of it.

Q. Did you ever get more than $75.00 in any one month?

A. I don't remember of getting it.

Q. Have you ever had a settlement with him for it?

A. I have not.

Q. Have you ever had a settlement with him for your house rent?

456 A. I have not.

Q. Is it not true that Crawford has paid out moneys for you to Judge Flinn and other parties since the transfer?

A. I could not tell whether he has or not.

Q. Don't you know that he has, and don't you know that you testified to that before in Judge Boise's court?

A. I said I thought he had paid out some to Mr. Flinn. I thought he had become responsible to Mr. Flinn; but if he did I did not request him to do so.

Q. Did not he pay to Judge Flinn, in October, $400?

A. I never seen him pay anything to Flinn.

Q. Did not you understand that he paid Flinn that much?

A. I came by some kind of impression that way that he paid that money to Judge Flinn.

Q. Did you hand that money out or did Crawford pay that to Flinn?

A. I paid nothing to Mr. Flinn, and I never saw Crawford pay him, or whether he has paid that I don't know; but there was an impression how I came by it was that Crawford had made himself responsible some way to Flinn for that money.

Q. Did he pay James Pipes some money?

A. I think he did.

Q. Did you request him to do that?

A. I did not.

Q. How much did he pay Pipes?

A. I don't know.

Q. Did you ever ask him?

A. I don't think that he ever told me what he paid him.

Q. Did he tell you that he had paid him at all?

A. I think he told me that he paid Pipes some money.

Q. If he paid him did he pay him on your account or his?

A. Well, I owed Pipes. I suppose that he paid it—the obligations that Pipes held against me.

457 Q. Did he make any charge on his books against you for the amount paid Pipes and Flinn?

A. I could not say as to that whether or not.

Q. Your business there was to oversee the books and collect the accounts and have a general superintendency of the books and mill and warehouse, was it not?

A. I was looking after the old books—the books that he got from me—them accounts. I did not have anything to do with the new accounts and transactions that he was making; that he had another book-keeper to attend to.

Q. You are still in his employ in that way?

A. I am.

Q. And still have that power of attorney?

A. Yes, sir.

Q. Have a general supervision?

A. No, sir; not the general supervision. Mr. Crawford has the general supervision.

Q. What kind of a supervision? Was it specified?

A. I have supervision under Crawford.

Q. What is it to do?

A. Well, I just look after business that Crawford tells me to.

Q. Well, tell of one thing that you have attended to under this power of attorney.

A. I went down with Mr. Crawford, and we examined the flume; examined where the water pours down through the flume into the race, and went and talked with the carpenter last Saturday about how to construct it.

Q. Have you ever examined the books for him?

A. I have not charge of his books; I have looked at them.

Q. Were they correct?

A. I think so. I don't pretend to be an expert in book-keeping, though.

458 Q. You can tell them when they are correct, though, can't you?

A. I might if I saw a very erroneous charge; I might detect it.

Q. You could not do that in your old books, how could you in his?

A. I suppose I could.

Q. Who does Lorenzo Gray report his water rents to?

A. He is employed by Mr. Crawford; I suppose he reports to him?

Q. Did you ever examine his reports?

A. I have not.

Q. Have you now told all that you have done under this power of attorney and what business relations you stood in in reference to it?

A. It would be very difficult for me to go to work and tell everything that I have attended to and everything that I have done. Mr. Crawford has quite a large amount of business—a large amount of interest in Albany.

Q. He wants an experienced man, a man that could make a success of it, to advise him?

(Objection by Flinn that it is an attempt to browbeat and insult the witness.)

A. You can ask him about that.

Q. Did you not state in your chief examination that Mr. Crawford employed you because you was a man that had large experience, and that he wanted a man of experience to manage his business?

A. I think I said that Mr. Crawford had been out of the business a long time and he wanted to have me to assist him and employed me for that purpose.

Q. And ever since that time you have been in his emloy at $75.00 a month?

A. I have been in his employ since that time, and I think I have generally received about $75.00 a month.

459 Q. Did you apply any of that $75.00 towards paying off the amount that he paid to Flinn and Jim Pipes for you?

A. I have not.

Q. Did you use any of that $75.00 a month that you received towards paying the house rent for the house that you occupy that you claim belongs to him, Mr. Crawford?

A. I have not.

Q. Did you make any credits or charges on the books or have any made about house rent?

A. I have not.

Q. Did you settle with Mr. Crawford in any way for the house rent?

A. Not to my knowledge.

Q. Did you ever say anything to him about it since the sale?

A. I talked to him about it at the time that he gave me the pivilege of living in the house.

Q. That was about the time of the sale, was it not?

A. That was shortly after the sale.

Q. The next day?

A. I could not say that it was the next day; it was soon after.

Q. You have not talked to him since about it?

A. Not to my recollection.

Q. What were the exact terms that you made with Crawford for work and the rent?

(Objection by Flinn because it appears that there were two contracts or arrangements—one for work and the other for the rent—and the counsel appears to want to get them both together in his question.)

A. As I before stated, after I had made this contract with Mr. Crawford and conveyed the property to him he spoke to me about employing me to attend to the business for him and gave me this written authority. I think that was the same night that the writ-

ings were made out. I did not speak to him about the house
460 to my recollection for a short time after; whether it was the next day or not I could not say. I told him that I would like now for to live in that house or rent that house from him. I don't remember the language I used, but at any rate it was to occupy the house. He *said* asked me if I would not just as leave have the Drigs house, another house. I told him I would rather live in that house. Well, he said I could have that house. I said something about compensation to him if I should ever be able, or something like that. I don't remember, but that was the conversation.

Q. When did you agree upon the salary of $75.00 a month?

A. I could not say just exactly when it was that he told me that I could have $75.00 a month, but I think it was during the first month that I was there.

Q. Did he pay you the $75.00 each month?

A. I think I have received about $75.00 a month; that is my recollection.

Q. Did you give receipts for the money?

A. I did not.

Q. Did Crawford ever pay you that money himself?

A. He has paid me part of it at times; whether he ever paid me the whole amount at one time himself or not I am not able to say. He has paid me part of it and told me to go to Gray and get the balance of it when he collected it.

Q. What relation is Gray, if any, Lorenzo Gray, to you?

A. He is a brother-in-law.

Q. Was he in your employ before you sold the mill to Mr. Crawford?

A. Yes, sir; he was.

Q. Does Gray have more authority about there than you or you than Gray?

(Objection by Flinn as immaterial, irrelevant, and not
461 cross-examination.)

A. He collects the water rents and, I think, Mr. Crawford's rents on his buildings.

Q. You have nothing to do with the rents of the houses—the brick block and the store?

A. Nothing to do with them.

Q. Did you ever collect the rents since you sold to Mr. Crawford?

A. I have never collected any rents.

Q. Did you collect $500 from L. C. Blain just after the sale to Mr. Crawford, for one year's rent?

A. I did not.

Q. Did not you collect from Foshay & Mason?

A. I did not.

Q. At any time?

(Objection as irrelevant and immaterial by Flinn.)

A. My son Robert collected the rents before I sold the property

generally for me. If he collected any rents over and above what was due, I have no knowledge of it. I will still add, when I come to call to recollection, it appears to me now that he said that he collected something ahead from Laton Blain on the rents—the amounts I can't say—which he had paid out on the insurance policy that had been got out on the building but a very short time before this transfer was made.

Q. Did not he collect up a year's rent of both of those men—Foshey & Mason and Blain?

A. That is the first time to my knowledge that I ever heard of anything more being collected than what I have spoken of.

Q. At the time you had that second talk with Crawford about the sale was any of your creditors pushing you or threatening to sue and attach? If so, who?

A. No one had made any threats to me.

Q. Were you fearful that they would sue?

A. I did not know what they might do.

Q. Had anybody threatened to prosecute you for being short in wheat?

462 A. No person had made any threats.

Q. Had any one demanded their wheat?

A. No one had demanded wheat.

Q. Had any one demanded immediate payment or security for the liabilities you owed them?

A. There was parties wishing to sell wheat and get the money for it, and I had not the money at the time to buy the wheat with.

Q. How much did they have to sell—those parties?

A. I don't remember now.

Q. Who was it that offered to sell and you did not have the money to buy with? Please name them.

A. I could not tell now, but my recollection is that parties said that they would be glad to sell some wheat and they would like to have the money.

Q. Can't you name them?

A. No; I could not name them.

Q. Is it not true that you were buying wheat right up to that time—all that was offered for sale?

A. I don't think I bought any wheat for a few days before I made the transfer.

Q. Did any one offer to sell within a few days before you made the transfer?

A. As I stated before, the impression on my mind now is that there was parties that would like to sell and wanted the money, and I put them off.

Q. If they had been very urgent you might have raised the money?

A. I might have done it, but there was none of them very urgent.

Q. So there was no immediate danger of your going to the penitentiary?

463 A. I don't suppose there was any immediate danger of my going to the penitentiary for not buying wheat.

Q. You said awhile ago that you made that sale to Crawford for fear that parties would send you to the penitentiary for being short in wheat?

A. I did not wait for that.

Q. You were fixing yourself, were you, so that they could not reach you for the wheat?

A. I fixed myself so that the wheat would all be purchased.

Q. And have neither paid the amount you owed for wheat or your creditors up to the present time?

A. I owe a certain amount at this time that is not paid.

Q. How much wheat, all together, had you ground up to the first of February, 1884, that you had not purchased?

A. The statement that I here produce, if I can be allowed to look at it, I can tell how much wheat I was short. It was 19,541 bushels.

Q. You had also purchased a large amount of wheat for which you had not paid anything and ground it?

A. I was that much wheat short, and I suppose that amount had been ground.

Q. Did you go to any of those parties that held wheat there and propose to buy or give your note, so as to cover your shortage?

A. At that time I had 6,000 bushels of wheat that was contracted for at the farmers' warehouse. I had 4,000 bushels of wheat contracted for at Halsey, and had not paid them for the wheat when I got into this difficulty. I allowed them to take the wheat back. The farmers' warehouse requested me, and I complied with the request, to give them a note for the difference there was between the price that I agreed to pay for it and what it was then worth, and I did that.

464 Q. When did you give your note?

A. I don't remember the date. It was some time after I made this transfer to Crawford.

Q. Did any of those parties that held wheat in your warehouse refuse to sell to you or take your note in payment for the wheat that they had in your warehouse—the part of it that you say was short?

A. As I before stated, my impression is that some parties said that they would like to sell wheat and get the money for it, and I had to tell them that I did not have the money on hand at present to purchase wheat with. I have no recollection of any persons pressing me as respects the wheat.

Q. Was that the first time that you were ever called upon to tell men that you did not have the money to buy with since you had commenced the milling business?

A. It was not.

Q. It was nothing uncommon, was it?

A. I have been out of money frequently.

Q. So that was no particular cause of alarm, then, to tell them that you were out of money just at that time?

A. I don't think it was.

Q. How did Crawford come to ask you if you were not in trouble?

A. I could not tell you.

Q. Where were you when he asked you that question?

A. I think we were down there at the mill or in the office, but I think it was outside of the mill that he first spoke to me about it.

Q. He spoke to you first about it?

A. My opinion is now that he spoke to me. I am not positive about that. I am not positive, but I may have spoken to him.

Q. Is that the first time he ever asked you if you were in trouble?

465 A. I think it is since I have been in the milling business.

Q. He had asked you, then, before you went into the milling business?

A. Once when I was in the mercantile business he asked me if I was not in trouble.

Q. You told him you were, did you?

(Objection by Flinn as immaterial, irrelevant, and not cross-examination.)

A. I told him I was to some extent.

Q. Your trouble in both instances consisted in some creditors trying to get their money, did it?

A. There was no person crowding me at the time I speak of now, but I wanted to be prepared if they did. I had just met with a heavy loss.

Q. When did you first talk with Ashby Pearce about giving him a deed?

A. The next morning after I made this arrangement with Mr. Crawford.

Q. Now, is it not a fact that you made that deed to Ashby Pearce before you ever spoke to him about it?

A. I don't think I did the deed he now has.

Q. Did you make him two deeds to that property?

A. I think there was one deed made that was not correct.

Q. When was that made?

A. That was made before the other was made—the one he has.

Q. Was it made before or after you made Crawford's deeds?

A. It was made after.

Q. You made the first deed to Pearce before you talked to him at all, did you?

A. I am not sure about that. My recollection now is that I sent over word to Mr. Pearce to come over, and that he came over

466 the next day, next morning, after the transfer, and that I myself wrote a quitclaim deed for it, and that I gave it to him, and that there was an error in the deed some way or other, and whether it was that day or the next day Strahan wrote a deed. That is my recollection now. I might be mistaken, but I think I am right.

Q. Well, did you agree upon the $4,000? Did you agree upon the amount that should be paid for the flour that you gave him?

A. Yes; I think there was an agreement about the amount of flour.

Q. Well, how much were you to have a barrel?

A. My recollection now is it was a good deal more than it was worth.

Q. Was that what flour was worth at that time?

A. My recollection is now it was $5.00 a barrel, which was a good deal more than it was worth. This that the Bank of British Columbia had that they afterward sold to Sibson, Church & Co. sold for $3.70.

Q. I asked you what flour was worth at that time, not what it was worth afterward.

A. I can't say what it could have been cashed for in Portland at that time.

Q. What was your object in selling flour at more than it was worth?

A. I had no object in doing it.

Q. Where were you when you made the contract with him?

A. In the mill.

Q. Who was present?

A. I could not remember who was present. I think Robert Foster was, and what other parties there was present in the mill I could not say.

Q. What was it that you turned over to William Goltra about that time—about the time you made the sale to Crawford?

467 A. A quantity of flour.

Q. Did you see Goltra yourself?

A. I did.

Q. Where was he when you saw him?

A. I think the first time I saw him after was in that building that he kept his agricultural store in.

Q. What did you tell him about it?

A. I will say it is my recollection that Judge Strahan made out a written conveyance conveying all of my rights, titles, and interests in this certain amount of flour to William Goltra, and I think Robert Foster took this conveyance and delivered it to him before I saw him; but I think it was that same day that I seen him afterward and explained to him what I had done, the condition that I was placed in; that I had this flour and made it over to him, and if there was any money came out of it, and should there be any more than would satisfy him, that he should give it to parties that I owed.

Q. Did he agree to that?

A. That is my recollection; that he said he would do so; that he was obliged to me, and the flour I explained to him just as well as I could the nature of the advancements, and I told him if flour should advance, as Sibson, Church & Co. had a short time before assured me it would and a great many times had assured me that it would before harvest, that it would be a very nice amount, and if it declined, why, there would not be anything.

Q. Goltra never got anything out of it, did he?

A. I don't think he ever did. I may state he did not.

Q. As a matter of fact, did he not refuse to have anything to do

with it as soon as he discovered the condition in which it was situated?

468 A. I told Mr. Goltra something like this: You be careful how you place yourself as respects this flour, so as not to make yourself liable, provided the flour won't pay the amount that has been advanced on it and the cost; and he said he would, and I think—I don't positively know how the arrangement was made. I don't positively know what he did say respecting this flour which the parties then had in their possession; but, I will add, the parties sold the flour and made returns of the sales of it to me, claiming quite a heavy amount that they said it had failed to meet the advances.

Q. Now, I will be pleased if you will be kind enough to answer my question. Did not Goltra refuse to have anything to do with the flour as soon as he found out the condition it was in?

A. That I could not tell you.

Q. When did you go to Burkhart to borrow the $15,000.

A. I could not tell the exact time.

Q. How long before you made the assignment?

A. Well, it was a number of days.

Q. Who is Burkhart, and what is his business?

A. He keeps a real estate office, and he said he was agent for parties in Portland here that loaned money on mortgages in large amounts.

Q. What relation is he of yours?

A. I don't know as I may say he is any particular relation.

Q. Is not he your nephew or a nephew of your wife?

A. I think he is her nephew.

Q. Is he the only man in Albany that you applied to for money besides to Mr. Crawford?

A. He is.

Q. Did you apply to J. Cox, who is a loaner of large amounts of money?

A. I think not.

469 Q. To Milton Hale, who is also a large money loaner?

A. I did not apply to him.

Q. Did you apply to William Vance for a loan of money?

A. I did not.

Q. Who did you apply to in Portland?

A. I went to three or four banks here; that Mr. McCraken gave me the names of them I could not say. I think one of them was this Dundee Company.

Q. Did you propose to give them a mortgage on your mill?

A. I proposed to give them a mortgage on anything that they required, but Burkhart had informed them that that brick block was the best property, or was good security for that amount.

Q. What amount was that?

A. $15,000, or I had proposed to take ten.

Q. Who else did you apply to besides the Dundee Co.?

A. There was two other banks, and I disremember the names of them.

Q. Where were they situated?
A. Here in Portland, and below this street (Washington).
Q. Were you acquainted with them?
A. I may have seen them, but I had no particular acquaintance.
Q. Do you remembar the time that you went to see them?
A. I do.
Q. What time was it—the date?
A. Oh, I could not give the date.
Q. In December?
A. It was not a great many days before I made this transfer.
Q. Thirty days before?
A. No, sir.
Q. About how many days?
A. I could not positively say; not many.
Q. Did you go to the Bank of british Columbia?
A. No, sir; I did not.
470 Q. Did you go to Ladd & Tilton's?
A. I did not.
Q. To the First National — of Portland?
A. No, sir; I wanted to borrow money on long time and give real-estate security, and my information was that they did not loan money.
Q. Did you go — the bank down here in Ainsworth's building?
A. No.
Q. Did you go to the savings bank?
A. I don't know where that is.
Q. The Portland savings bank?
A. I did not go to this bank here on Washington street.
Q. Did you know at the time that you were trying to borrow that money that you were short that wheat to the extent of 20,000 bushels?
A. I did.
Q. You knew, then, that you were short of wheat when you bought the Hurlburt boys' wheat, did you, and old man Anderson's wheat?
A. I have no recollection of buying old man Anderson's wheat at that time. I suppose that I knowed it when I bought the Hurlburt boys' wheat.
Q. You had known for two or three weeks before you made the assignment that you were short of wheat, had you not?
A. I don't think I knew it that long.
Q. When you came from Portland to Albany did you go directly to John Crawford?
A. I don't think I did right immediately.
Q. Did you go to him soon after?
A. I could not say exactly how soon it was, but it was not a great while.
Q. Did you try to borrow money at that time?
A. In the first conversation with Mr. Crawford about this matter I don't remember about requesting or about whether I made an application to him to borrow money at first or not, particularly.

Q. Did you expect to mortgage your property if you could
471 get the money and leave the Crawfords out with the others?

A. I expected to mortgage my property if I could have got the money.

Q. Did you ever undertake to borrow money of John Conner some time before you made this sale to Crawford, in which he asked you about a mortgage on record in favor of William Crawford?

A. I have no recollection of that conversation.

Q. You did not tell him, then, that that mortgage had been paid off a long time ago?

(Objection by Flinn as having been gone over and not cross-examination.)

A. As I before stated, I have no recollection of having any conversation with Mr. Conner about that matter.

Q. Did you have a conversation with Mr. H. Merrill on this subject?

(Objection by Flinn as immaterial, irrelevant, and not cross-examination.)

A. I have no recollection of ever having had a conversation with Mr. Merrill upon that subject at all.

Q. Did you have a conversation with Mr. Conner in reference to that matter when Mr. Merrill was present?

A. As I stated before, I have no recollection of ever having had any conversation with Mr. Conner about that.

Q. You would not have told Mr. Conner that unless it had been true, would you?

A. I don't think I would.

Q. You think you did not have the conversation with Mr. Anderson that he relates in his examination?

A. I don't think I did, all of it.

Q. You think he was mistaken, then, in what he said in reference to a conversation he had with you in that particular?

A. I think he was in part.

472 Q. Was he mistaken in the part that he testified to in reference to your property simply being in the hands of Crawford to secure your creditors and yourself?

A. I don't think that I made any such statement as that to him. I am satisfied I did not.

Q. You did tell him that if you could arrange with your creditors you could get your property back, did you, in substance?

(3.) See addenda marked (3) at the end of this deposition.

A. I told him that Mr. Crawford had said that if I could arrange it with my creditors, so that I could run that mill, that he would let me have it on very reasonable terms.

Q. In the conversation with Mr. Anderson did you make that remark?

A. I think that it was in the first conversation I had with him, after I made this trade with Mr. Crawford.

Q. When did you have that conversation with Crawford, or understanding? When did you make that arrangement with Mr. Crawford?

A. That was some time—a few days after I had sold the mill to him.

Q. Did you state to Mr. Anderson what the terms were?

A. No, sir; that is what I said to him in respect to the mill.

Q. Did you state to Mr. Powell what the terms were?

A. No, sir.

Q. What were the easy terms that you were to have it back on?

A. I have given you the language of Mr. Crawford. There was no terms specified, only that I could have it on very reasonable terms.

Q. Was that understood on the night you made the deeds?

A. Nothing said respecting that whatever.

Q. Did you talk on that subject before you made the deeds?

A. Had no conversation on that subject until a day or two after the deeds were made out; well, some days afterward.

Q. Did you make a deed to your son Robert, or to one of
473 your sons, of some property about the time you gave it to Crawford?

A. No, sir.

Q. Did you turn any property over to him in any way?

A. No, sir.

Q. Did you turn any money or property over to your daughter?

A. I did not.

Q. Did not you turn a lot of money over to one of your daughters about the time that you made the transfer to Crawford?

A. I did not.

Q. Is it not true that you testified in your examination before Judge Boise, in the circuit court in Linn county, that you turned a lot of property down about the mill and mill office over to your son Robert about the time that you made the transfer to Crawford?

A. I think Robert was to have a little property that was in the office—the desk and something else.

Q. Is not that property still in the office?

A. That property is there in the office.

Q. Did you give Robert a bill of sale of it?

A. I don't remember about that.

Q. Is it not true that you have been using that property ever since?

A. I will just now state that property was in the office and the safe that was there some time after that was blowed up; as it flew out it struck the desk and broke it very badly, the door of the safe did, and it was rendered pretty near worthless; it was afterwards fixed up and is standing there in the office.

Q. How long was that after the sale that the safe was blown open?

A. I could not say now; it was not a great while.

Q. Was it not as much as six months?

A. Probably it might have been that long.

Q. It was way along in September, and this transfer was made in February, was it not?

474 A. I could not say when that safe was blown open, but I know it scattered the papers around there in the office.

Q. Were your papers in there at that time when it was blown up?

A. There was some wheat receipts that Mr. Crawford had given to me; I know they were in there at the time; a note was in there, too.

Q. Where did you find the Frank Parton note that you could not find on the other trial?

A. Mr. Crawford gave it to me.

Q. When did he give it to you?

A. He gave it to me a good while ago.

Q. As much as six months ago?

(Objection by Flinn as having been gone over.)

A. I don't think it was that long ago.

Q. Did you make any calculation to ascertain the amount of your accounts that were due you at the time you made the transfer?

A. A kind of a rough calculation.

Q. Did it include the bills receivable that were so marked in your ledger?

A. According to my best calculation I concluded they ought to be worth $3,000, and I told Mr. Crawford he could have them for that.

Q. You may now answer that question as to whether or not it included the bills receivable as shown by your ledger?

A. I don't understand your question. What do you mean by bills receivable?

Q. I mean the bills as shown by your ledger on page 94 on Ledger "G;" the ledger marked "G" by the master in blue pencil.

A. I don't understand these bills shown in Ledger "G."

Q. Did the parties named there owe you the amounts set opposite to their names as indicated by the accounts on page 94?

475 A. I could not say as respects that. I don't understand these, whether paid or unpaid.

Q. At what per cent. did you sell him the accounts, at their face valuation or less?

A. There was a great many worthless bills on the books, and my best judgment was that they would be worth $3,000.

Q. How did you arrive at that conclusion?

A. Well, I guessed at it to some extent.

Q. Did you know how much the accounts amounted to?

A. I did not know positively how much they amounted to.

Q. About how much, do you think?

A. I could not tell; there was a good deal of guess-work about it.

Q. Did you sell your notes with them? Were they included in this $3,000?

A. The notes was included.

Q. Well, how much did they amount to?

A. I could not tell anything about that; there was a great many

notes that were worthless or could not be collected, and there was a few that could be collected, but a great many worthless.

Q. Was there as much as $5,400 coming to you, in notes, at the time you made the sale to Crawford?

A. Oh, I should think not that much; they were worthless notes.

Q. Are any of those notes, or parties against whom you had bills receivable, good, or able to pay their debts?

(Here the Ledger "G," marked "G" in blue pencil, is shown to witness, and his attention called to page 94 thereof.)

A. I can't give an explanation of these notes.

Q. That book is the book that you kept, and in which you kept your business transactions, is it not?

A. This is one of my books that I turned over to Mr. Crawford.

(Here the pages 94 & 95 of Book "G," above referred to, are offered in evidence on behalf of complainants, being accounts
476 of bills receivable, and the master is asked to make certified copies of said pages, to be substituted for the originals in this case, as the book itself is now in evidence in another case pending.)

(Objection by Flinn, because it is not yet shown or proven who wrote those pages or any part of them or in whose handwriting they are, and the witness testifies that he don't understand them.)

(Said pages were received, copies made and marked by the master "Complainant's Ex. G.")

Here court adjourned until nine o'clock to-morrow morning, Dec. 23.

DECEMBER 23RD.

Court convened at half past nine, and the case proceeded, defendant FOSTER still on the stand.

Continued cross-examination by WEATHERFORD:

Q. Did you sell any large amount of flour after the commencement of harvest, 1883, for which you failed to collect the money, or to draw advances upon it; if so, to whom?

A. I did not sell any large amount of flour that I failed to receive either advances or the pay.

Q. I understood you to say yesterday that you sold quite a large amount of flour to some persons in Portland other than Sibson, Church & Co. Will you please name who it was?

A. My recollection was that there had been a lot of flour sold to Balfour, Guthery & Co.

Q. That was sold outright, was it?

A. That was sold outright.

Q. Do you remember the amount?

A. As I before stated, I don't remember the amount, but I think it was about 5,000 barrels.

Q. Do you remember what you got for that flour?

A. I don't remember.

Q. Was that sold before flour declined?

A. That, I think, was sold before the decline in flour.

477 Q. Have you given all of the losses that you met with in your testimony in this case during the time commencing with harvest, 1883?

A. I don't know whether I have or not.

Q. Have you given all that you remember of?

A. I have tried to answer the questions asked me to the best of my ability. I don't remember whether they have set forth all of the losses that I met with during that time or not.

Q. All of the losses that amounted to any great amount or to $2,000 have been mentioned by you, I suppose, have they?

A. I think they have.

Q. Do you know what the average price of wheat was from the commencing of harvest to the time you sold out to Crawford?

A. I could not say what that was.

Q. What is your best recollection of that?

A. I think I paid as high as a dollar a bushel for wheat that I bought out of warehouses, and I think I remember the price of wheat I bought in the warehouse at the mill was running to 90 cents and over. I don't have the figures. There might have been some small lots bought in the first of the season at a lower figure than that. It would be impossible for me to tell.

Q. The most that you purchased was in your own warehouse, was it not?

A. The majority of it was there.

Q. About how much did you have stored in your warehouse in the year of 1883 at the commencing of harvest?

A. I could not tell.

Q. How much did you calculate that when you estimated your shortage on wheat?

A. I don't remember.

Q. Was it as much as 150,000 bushels?

A. I could not, as I before stated, positively say how much wheat there was. I don't hardly think there was that much.

478 Q. Was it in that neighborhood?

A. I know there was quite a large amount of wheat, but the amount I could not say.

Q. Was it more than 130,000?

A. I stated before I could not mention the amount.

Q. What is your recollection on that?

A. My recollection is that there was quite a large amount of wheat, but, as I stated before, to give the amount would be impossible for me to do.

Q. How much wheat did you purchase outside of your own warehouse and of whom did you purchase it?

A. I recollect purchasing considerable wheat of the farmers' warehouse there in Albany, and I purchased wheat of W. M. Robinson at Halsey. Whether I purchased of other parties I don't remember.

Q. How much of Robinson?

A. That I don't remember.

Q. Was it 10,000 bushels?

A. As I before stated, I could not say. I know there was an amount that at the time I made this transfer or sale that had not been paid for.

Q. That was not delivered, was it?

A. That was not delivered.

Q. How much did you purchase that was delivered?

A. That, as I before stated, would be impossible for me to tell.

Q. Did you purchase any that was delivered?

A. I did.

Q. Can you estimate the amount?

A. I cannot.

Q. Can you tell the amount that was purchased of the Farmers' Company in Albany?

A. I can't tell. I did not charge my mind with the amounts. I think there was several purchases made. I had been in the habit of buying wheat largely from them.

479 Q. Did you ship any wheat without grinding?

A. I did not ship any wheat, to my recollection. I don't think I did.

Q. You heard the testimony of Mr. Mantasce, did not you, given in this case?

A. I did.

Q. There is quite a difference in the testimony by him in reference to his conversation on this. Is it not probable that you were mistaken in the testimony?

A. I am very sure that I never told him that I had turned over this property to Mr. Crawford for the benifit of my creditors.

Q. He testified to something that was not true in reference to that, then, I suppose?

(Objection by Flinn as not proper examination and only calling for the opinion of the witness as to whether some one else is telling the truth and not asking for facts.)

A. As I before stated, I never told him that I had turned over this property to John A. Crawford for the benifit of my creditors.

Q. You heard the testimony of W. C. Morgan, did you, in this case?

A. I think I heard his testimony.

Q. Is there a probability that you were mistaken in the statement to him, wherein you differ in your statements?

A. State what point you wish me to answer.

Q. In regard to the conversation you had with him about his wheat being all right and about your purchasing the balance, or was his testimony substantially true in regard to that conversation?

A. I now disremember anything I said, only one thing. I said in my testimony that I thought he was mistaken about that being a note that was handed to him for to get the money from Mr. Crawford for the — he had sold. I suppose it was an order, although I did not write —; neither did I read it; and I only draw my

480 conclusions from the way business would naturally have been done.

Q. You heard the testimony of Mr. Powell, did you, in this case?
A. I did.
Q. His testimony in regard to the conversation that he had with you was substantially true, was it not?

(Objection by Flinn as an improper way of examining a witness, to ask him as to whether other people have testified to the truth or not.)

A. I don't know whether I remember all the particular points in his testimony. Call my attention to what you wish me to answer.
Q. About your having plenty of property to pay all of your debts, but it was in hands that you could not handle it now.
A. As I before stated, I think Mr. Powell was mistaken about that. I don't think I used language that conveyed that idea, because I did not have property at that time.
Q. Are you sure that you did not use that language?
A. I said that I did not think I used that language.
Q. But you may have done so?
A. I am very sure I did not use just such language as that.
Q. You did tell him that you expected to retain an interest in the mill, did you not?
A. I did not tell him that I had any interest. I told him that I had sold that mill to Mr. Crawford, and that I did not have any interest in the mill. He never talked to me very much about anything that I owed him. It was all mostly respecting a claim that I owed his brother-in-law, and he said that his brother-in-law was deranged.
Q. Did not you tell him, however, that you had plenty of property, but you had it in other hands at that time, so that you
481 could not use it?
A. I did not convey any such an idea as that, as I before stated, because I did not have it.
Q. So he was mistaken in that?
A. He was mistaken in that particular.
Q. Did you hear the testimony of Mr. Caldwell?
A. I don't remember about his testimony; I probably heard it.
Q. Did not you tell Mr. Caldwell that you were going to run the mill as you had been running it, and would probably pay the creditors off as quick as you could make some arrangement with your creditors, or words to that effect?
A. I think, as I before stated, that I may have told Mr. Caldwell that if I could make arrangements with the persons that I owed by which I could go on and run the mill that Mr. Crawford had said that I could have it on very reasonable terms; and I remember of telling some parties that if times was to liven up and business was to be as it sometimes had been that I could make money and pay up my debts.
Q. Did not you also tell him that you had simply put the property into other hands so as to protect your creditors and yourself from a forced sale?
A. No, sir; I did not tell him anything of that kind.

Q. How did you expect to make money if the times livened up if you had sold the mill?

A. Out of the business that I could transact out of the mill.

Q. You expected to make it out of the mill as you had in the past years?

A. Yes; I expected to make it out of profits in buying wheat and manufacturing it into flour and selling the flour.

482 Q. Did you hear the testimony of Mr. Chiswel in this case?

A. I think I heard him testify—some of it; I don't remember the particulars of it.

Q. Did you have the conversation with Mr. Chiswel that he testified to in reference to employing him and paying him off for his labor in the mill after the fourth of February?

A. As I before stated, Mr. Crawford employed me to look after his interests about the mill; it was necessary that we should have some flour ground; I went to Mr. Chiswel and spoke to him to come and run the mill a few days, and he came and did so, and I suppose he received his pay for it; I don't remember whether I paid him or not; if I did, it was out of Mr. Crawford's money.

Q. You told him at that time, in answer to his question as to Crawford's having some interest, that you had some interest also, and that it was all right, or words to that effect?

A. I recollect no such conversation as that, telling him that I had interests; I think he has misconstrued some of the conversation.

Q. Do you remember the testimony of William Goltra that was testified by him of arrangements made with you about storing wheat?

A. I don't particularly remember what he said respecting that.

Q. His testimony was substantially correct in that regard, was it not?

A. Call my attention to the parts of his testimony that you wish me to explain and I will do it to the best of my ability.

Q. You told him that you would not charge him double storage, did not you, for wheat that went over from the year before, or 1883?

A. I remember of having a conversation with him. In the first conversation he made the request that there should be no storage on his wheat. I told him that I would see Mr. Crawford about

483 that; and I saw him and he said that Mr. Goltra could put his wheat in there on the terms as stated; and I saw Mr. Goltra afterward and I told him that.

Q. Mr. Goltra said that you told him that you wanted to get his wheat for 1884, and that you told him that there would be no storage on the wheat over from 1883, and that you told him that it would be all right. Is he correct in that?

(Objection by Flinn that what he said that Goltra stated is not correctly represented in the question; and, further, that it is an improper way to ask the witness whether some one else has told the truth, and it does not call for facts.)

A. I don't think Mr. Goltra had any wheat in store at the time I sold out to Mr. Crawford to hold over.

Q. Did you promise to store his wheat free of charge in the fall of 1884, just before the harvest of that year?

A. The proposition that Mr. Goltra made to me about the way he wanted to store his wheat, as I before stated, I spoke to Mr. Crawford about it, and he told me that I might tell Mr. Goltra that he could bring his wheat on; that he would receive it on that proposition; and I think I have already stated what the proposition was as near as I can recollect it.

Q. So Mr. Goltra is mistaken, then, in his testimony as to that conversation?

(Objection by Flinn as improper and impertinent.)

A. I have related to the best of my ability.

Q. Was Mr. Conner mistaken in his testimony in reference to the conversation had with him about the mortgage of William Crawford being cancelled?

484 (Objection by Flinn as improper, impertinent, and does not call for facts.)

A. As I before stated, I have no recollection of having such a conversation with Mr. Conner.

Q. If you did make that statement to Mr. Conner, was it true or false?

(Objection by Flinn, same as above.)

A. That mortgage that William Crawford held on that property there had no payments been made on it; there was no endorsements in the notes or any settlement respecting them until the time the other notes was given in lieu of them, and it was cancelled.

Q. Now, will you please answer the question?

(Objection same as above by Flinn.)

A. I will say that the same question has been asked me several times before by the counsel during the cross-examination. I think I have.

Q. Did you hear the testimony of T. I. Anderson in this case?

A. I heard Anderson testify here.

Q. Did he report those conversations with you correctly or not?

A. Call my attention to the part of his conversation which you wish me to explain and I will do it if it is in my power.

Q. Was his testimony correct and true about your turning over the property to John Crawford to hold for the benifit of yourself and your creditors?

(Objection by Flinn, same as above.)

A. As I before stated, I did not use that language to him.

Q. Was he also mistaken when he said that you told him that Crawford was talking of selling the mill and he asked you what would become of the creditors if he should sell it, and you in sub-

stance told him that your interest in it would far more than pay the creditors?

(Objection by Flinn, same as above.)

485 A. I may have told him that Crawford wished to sell the mill, but I did not tell him that I had any interest in the mill or expected to receive any compensation out of the sale.

Q. How did you expect to receive any benefit from the mill, so as to pay your creditors, if you had sold it to Crawford?

A. As I before stated, if times had livened up and the price of flour raised and there had been a good, lively business doing, and I could have run that mill on reasonable terms, I might have made a profit out of buying wheat and manufacturing flour, and in that way paid my creditors.

Q. Did you expect to be able to buy wheat when you had, as you say, nothing to buy with?

A. That would have been something in future that I would have had to made arrangements concerning; that I had not then taken into consideration.

Q. You had had about 18 years' experience in that mill, had you not, and during that time had not made anything?

A. Sometimes I made and sometimes I lost.

Q. During that time you had not made a sufficient amount of money to pay the interest on a portion of the purchase-money, had you?

A. I did not use the money for that purpose; there was interest that was due that I used up.

Q. What assurance, then, had you that you could use the mill so as to pay your creditors?

(Objection by Flinn because the counsel wants to argue the case with the witness instead of enquiring into the facts.)

A. I don't positively say that I would have been able to make profits out of the mill; I could try.

Q. Did you go to William Goltra and make a proposition
486 to give him some duplicate notes, so as to raise the amount of indebtedness, for it about the time of the sale to Crawford?

A. I don't understand that question.

Q. Did you propose to William Goltra or W. H. Goltra to give him some extra notes that you did not owe him for, antedated, so as to increase your indebtedness, for the purpose of shielding your property or money?

A. I did not.

Q. You did not execute a note of that character at one time to Mr. W. H. Goltra and try to get him to claim the note as genuine?

A. I never did.

Q. Nothing of that nature?

—. ——.

Q. Nothing of that nature to Mr. Goltra or his son, John Goltra?

A. Neither to Mr. Goltra nor his son.

Q. You are sure of that, are you?

A. I am sure of it.

Q. And did not you ask him and propose to him to have him hold your note, so as to cover anything that might possibly come on the wheat or flour which you had claimed that you had shipped to Europe that would cover your interest to Goltra?

A. No recollection of making any propositions to Goltra; I certainly had no conversation with him in any way respecting this matter until after I had made this sale to Crawford and he had received this flour or this flour had been turned over to him, and after the flour was turned over to him I have not the least recollection of any proposition being made by him or me for any notes or any writing or any other conveyance respecting it.

Q. And did you, after the sale to Crawford and after the assignment of wheat to Goltra, which you claimed was shipped, make that proposition to him, to give him a note so as to cover anything that might be coming on it?

A. I don't understand what you mean by that wheat shipped to Goltra.

487 Q. Well, that wheat.

A. I have no recollection, as I stated before, of making any proposition to make a note to him or him making a note to me or anything of that kind. I merely turned that flour over to him, and after that I have no recollection of any other propositions or requests to enter into respecting it.

Q. Well, did you execute a note to Goltra after about the time you made the assignment that you have testified to for the flour that was shipped to England to Mr. Goltra?

A. Mr. Goltra held a note against me that I had given to him some time before that for wheat that he had sold, and now for to give him what security I could I turned this flour over to him, and that was the reason why I sent him that flour or turned it over to him.

Q. At that time did you also send a note to him?

A. No notes that ever I heard of or knew of was sent to him; nothing but the paper concerning my signing over my right and title to him; that is my understanding of the way the business was arranged.

Q. On the five notes given to William Crawford and referred to in your testimony in this case as "Exhibit 7" I see an endorsement made July 20th, 1875, of $1,200 on each note, making on the five notes $6,000. Did you pay that in cash?

A. I think it was paid in cash, or he might have received drafts on other parties for it.

Q. It was either paid in cash or drafts?

A. That would be my recollection of the matter.

Q. Who did you pay it to?

A. John A. Crawford.

Q. Did you give him a note as part payment of that interest?

488 A. I think not.

Q. Are you certain of that?

A. I feel very certain that he did not receive any note for that; although I could not say positively, I feel very certain that he did not.

Q. What did you give him a $3,000 note for on that day?

(The note herein referred to is "Defendants' Exhibit 13.")

A. I could not positively say about that; this note might possibly have been given for that interest. As I have before stated, I could not say positively, but it kind of occurs to me that it was not given in that way; this note, however, is not dated on that day.

Q. When is it dated?

A. 1865. Oh, I was looking at the upper endorsement that you referred to and you had called my attention to the one below; that appears to be the same date; that note may possibly have been given as part of the interest on them notes.

Q. Well, what was that note given for, that $3,000 note marked "Exhibit 13"?

A. I could not positively say what it was given for, as I before stated; it appears to be dated at the same time that the interest are marked on the other notes, and it is possible it might have been given for the interest.

Q. How much interest did you pay at that time?

A. I think there appears to be five notes and $1,200 endorsed on each note as paid July 20th, 1875.

Q. Did not you give Mr. Crawford credit on that date on the books for $6,000 as interest paid on those notes?

A. I don't know. I think not.

Q. Please turn to his account and see if you did.

489 A. I am not posted on the accounts. I can't figure them up.

Q. Is that the book lying there in front of you in which you have the accounts for that date on the index (referring to book "G")?

A. I don't think this book goes back to that date.

(Here another book, marked as Ledger "D," and page 105 thereof, is shown to witness, and he is asked:)

Q. Does that book go back to that date, and is that the account?

A. I presume that is Mr. Crawford's account.

Q. You may state what entry is on page 105, on the right-hand side of the page, and what it was for. Read the entries.

A. I could not tell what it was for; it appears to refer to page 703 of some other journal.

Q. Read the answer in full.

A. July—I can't tell what them figures is by amount due on the note.

(By WOLVERTON:) Due on——

(Here objection by Flinn to counsel interpreting to witness.)

(By MASTER:) By amount due on the note.

A. Probably that is what it is—by amount due on note.

Q. Give the amount.

A. I did; $6,000.

Q. Mr. Foster, please turn to the journal to which this item refers and explain, if you can, the whole transaction.

A. Is that journal here?

—. I think the journal is not here that has that entry on it.

Q. Was that the interest that was endorsed on the five notes marked "Exhibit 7"?

A. That would be impossible for me to say.

Q. What interest was it, then?

A. That would be impossible for me to say, as long ago as that.

490. Q. If you paid him $6,000 interest, as you have testified, in cash upon that date why did you credit his account with $6,000 interest at the same time on your books?

A. I did not testify that $6,000 was paid him in cash on that date. I said I thought it had been paid in cash or orders, but I was not positive about how it was paid.

Q. Crawford at that time had been paying you some money, had he not, so as to square up accounts with you?

A. There was money very frequently passing between Mr. Crawford and me. I could not say how that was respecting his accounts.

Q. Mr. Foster, did you preserve all the notes that you have taken up in the last number of years and lay them away?

A. I think not.

Q. Did you preserve any excepting these that you have exhibited here in testimony?

A. I think some others.

Q. That were given as long ago as 1875?

A. I think so.

Q. Whose notes?

A. I could not say as respects that.

Q. Can you name one?

(Here counsel Flinn hands witness a paper, to which counsel Weatherford objected.)

A. Here appears to be a note for $13,000 that was dated October 12, 1875.

Q. Who was that note given to?

A. John A. Crawford.

Q. Mr. Foster, I asked you if there were other notes than those given to Mr. Crawford. Can you name one given to any other person as long ago as 1875?

(Objection by Flinn that it was not the previous question; that it, the question, was, if there were any other notes than those offered in evidence, and the present question is trying to browbeat the witness.)

491 A. I will state that I have not been particular about keeping old notes that I have taken up. I saw a package done up in an old box in the office, and I said to Robert, "What is that?" He said, "That is the old notes you took up just before you went away."

There was a box of papers that was considered of no great value that it was thrown into and set away; and since these suits was commenced I thought about them—about that envelop- that he said contained them notes, and I went and got that box and examined it through and I found them, and that is the way I come to have these notes.

Q. Was there any other notes there, from any other parties, I mean, besides Crawford?

A. It appears to me that there was a note that I had taken up from Frank Parton, now, that was given to Frank Parton.

Q. Was that all?

A. I think that is all that I had taken up and had before I started East, and he had put them into that box.

Q. Where was that box?

A. My opinion is now that it was filled with old papers and had been put out into the sack house.

Q. What other papers?

A. I don't remember now; it had old drafts and other papers.

Q. Was that box fastened up—covered?

A. I think it had a lid nailed on it.

Q. Was it your habit to cut off your name off of your old notes?

A. As a general thing I disfigured the note so that it would not be considered a legal note.

Q. In what way?

492 A. Well, by cutting off the name or marking on the note, tearing it up, or something of the kind.

Q. You did that with all of the notes taken up that Crawford held, did you?

A. I think those notes given for the mortgage never have been disfigured.

Q. All of the other notes had, had they?

A. I could not positively say, but I think they was.

Q. Where have those notes been all the time since you took them up, the notes marked "Exhibit 7"?

A. Them notes was stuck into an old pocket-book and put into the desk.

Q. How did you come to preserve those notes?

A. I can't give any particular reason why I preserved them, but it appears that I did.

Q. Why did not you cut the names off them?

A. Well, I can't give any particular reason for that.

Q. How did you come to preserve the other notes that you took up about that time, or did you take up any notes about that time?

(Objection by Flinn as immaterial, irrelevant, and not cross-examination.)

A. I don't think I took up any other notes at the time I took them up.

Redirect.

Here the cross-examination closed and redirect examination of the witness proceeded.

Questions by FLINN:

Q. Did you make the entry on page 105 of the book marked "Exhibit D" that you attempted to read at the request of counsel for complainant?

A. I did not.

Q. Who assisted you to read it at the time you were asked to read it, if any one?

(Objection by Weatherford as immaterial.)

A. Mr. Durham, the master, suggested that the word was
493 "endorsed." After examining it I came to the conclusion that that was what it was intended for.

Q. Do you know who made that entry; in whose handwriting it is?

A. I do not.

Q. Did you direct it to be made there, personally?

A. I have no knowledge of it, as I said before. I see it refers, if I read it right, to page 703 of the journal.

Q. To the best of your judgment, is it dated July 21st or 29th?

A. I really could not tell what time that is intended for.

Q. What year appears upon that entry in the book?

A. The year don't appear to be marked there.

Q. Do you know when it was made?

A. I do not.

Q. Your attention has been called to money you made and the losses you have suffered since you went into business in the mill in 1867. You may state what amount of money you have spent since that time in improving the mill property which you sold to Mr. Crawford on February sixth, 1884?

(Objection by Weatherford as not proper redirect examination.)

A. That would be rather impossible for me to state in the full amount, but I have expended a great deal of money on that mill at different times. The second year after I got it I built it; the machinery part of it most entirely all new, which I think cost about $18,000. Then at various times since I have expended quite large amounts of money on it. I built a large warehouse that was attached to it or was convenient to it, which cost something like $6,000, and I changed the mill the year before I turned it over to him, which cost me a large amount.

Q. About what amount did the changing cost when you
494 put in the roller system the year before you turned it over to Crawford?

(Objection by Weatherford as immaterial and not proper redirect examination.)

A. That would be impossible for me to say. I think it cost over $8,000.

Q. You may state whether you put in a new dam during the time you owned it.

(Objection by Weatherford, same as above.)

A. I frequently repaired the old dam. I never put in an entire new dam.

Q. You may state whether you remember any large amounts which you paid for improving the mill, except the $18,000 and the $8,000 which you have mentioned.

A. Oh, yes; I laid out a great deal more than that on it. I remember—I think it was in 1877—that I built that addition to the front of the mill and done a good deal of work on the inside of the mill, and I think—I could not say particularly now what it cost—but I think something like rising $8,000. Then I made repairs most every year one way and another.

Q. You may examine note marked by the master "10" and state for what purpose you used that money.

(Objection by Weatherford as having been gone over in direct examination, and no question was asked concerning it in cross-examination.)

A. I borrowed that money at the time I was building that brick house and used it for that purpose.

Q. What did the brick house which you sold to William Crawford cost you and when did you build it?

(Same objection as above.)

A. I built it in 1878, but the amount that it cost it would
495 be impossible for me to state at this time.

Q. Your attention has been called to and you have said something about running and operating the mill after you sold it to Crawford. You may state whether or not there was any conversation or talk or agreement between you and Mr. Crawford about your taking the mill back or off his hands.

(Objection by Weatherford, same as above.)

A. No such talk or agreement as that.

Q. You mentioned several times in your cross-examination that you told some of the witnesses who have testified that Mr. Crawford said that he would let you have the mill back. What did you mean by that?

A. I don't remember my precise language now, but in speaking respecting the mill I wish to be understood as saying that Mr. Crawford said that if I could arrange my business with my creditors that he would lease the mill to me on very reasonable terms.

Q. Was that the way he was to let you have it—that is, by lease, or were you to have the mill back as yours?

A. No; I was to lease the mill from him; he was to remain the owner; that was my understanding of his proposition.

(Here book marked Exhibit "G" is shown to witness and his attention called to pages 94 and 95.)

Q. You may examine those pages and state whether you were the owner of the notes or bills receivable mentioned therein at the time of the sale of your property to Crawford, Feb. 6, 1884; and you may state where those notes were, if you know, at that time.

A. A large majority or most all the notes that I had at that time that was considered good I had deposited with John Conner and drawn a certain amount of money on them which I had used
496 in the business, and when I made this sale to Crawford John Conner retained those notes as security for the money that I had received. Some time afterward—I don't know how long, maybe a year—I spoke to him respecting them notes and he said he had collected those that — called good, and I think he said he had twenty dollars over what I had got. It appears to me he handed me some notes that was left. I don't remember particularly now how many there was; I only remember just one now—a note on Crowder, who had gone to the upper country; I think it was for only $100.

Q. What do you mean by saying that he had $20 more than had been got?

A. That in collecting these notes, after he had received his pay, there was $20 left there, and he said that I was endorsed—had endorsed a note for some party that hadn't paid it, and when they paid that note he would pay me that $20.

Q. Is it not true that you had pledged all the notes that you considered good and raised money on them before you made this sale to Crawford—all the notes that you considered good or that anybody would advance you money on?

A. My recollection is now that I had deposited with Conner all the notes of any size that he was willing to receive. I had an arrangement with him by which if any party whose note he held had wheat in the mill and wished to sell it and I could take the pay out of the notes that he would exchange their note for other notes that he was willing to receive, and my recollection is that I was examining pretty particular to get some of the notes to exchange for another note and it was with a little difficulty that I could find notes that he would take.

Q. Were those notes or bills receivable mentioned on pages
497 94 and 95 of Exhibit "G" deposited with Mr. Conner as collateral security for other notes that Mr. John Crawford paid to Mr. John Conner of the notes marked Exhibit "9," paid by Mr. Crawford, or the note of $5,000 which Mr. Pearce paid, marked Exhibit "1"?

(Objection by Weatherford as not proper redirect examination and as immaterial.)

A. None of them was left for them notes.

Q. At the time that you sold out to Mr. Crawford you may state whether you sold any flour to Mr. S. E. Young, of Albany, and how much and for what purpose.

(Objection by Weatherford, same as above.)

A. I sold him—I turned over to him two hundred barrels of flour and some feed.

Q. Will you state for what purpose?

A. On what I owed him.

Q. You may state whether you have any other old notes that you took up a year or two ago and preserved?

A. That I could not state without examining and looking. I may have some.

Q. If you have any, produce them.

A. Here appears to be two notes that I took from Mr. Crawford.

Q. Are these the notes referred to in your cross-examination, which were mentioned on page 423 of the book marked "P" by the master?

A. These are the notes that I referred to—they and their interest making $23,016.

(Here the notes last above referred to are offered in evidence on behalf of defendants, and the master is asked to mark them, which is done, and the notes are marked "Defendants' Exhibits 18 & 19.")

(Objection by Weatherford as immaterial, irrelevant, and
498 not proper redirect examination.)

Q. You were asked in cross-examination to read from page 424 of book "P," as marked by the master, as a part of your deposition. You may now state, after examining Exhibits "11 & 12" and their dates and the date of that entry which you read, whether those two notes were dated one day before the date of the entry, if you have any explanation to give.

A. I don't know as I can give any explanation to that. I see I made this statement there, but I am very certain that these notes that I have here was given after I had dissolved partnership and bought the property from John Foster. But why I did not make the statement on the book before that I can furnish no reason for at present.

Q. Do you mean to say that you made the bargain with John Foster to dissolve that partnership before you executed those notes numbered "11 & 12" to Mr. Crawford?

(Objection by Weatherford, because he is not asking for a statement of facts, but for some indefinite meaning he may have given of some kind.)

A. I would state that I am not positive that I had bought John Foster out and dissolved partnership with him before I made them two notes to Mr. Crawford. Part of the understanding of that contract was that I was to take up the notes that he was responsible for, and these were given for the notes that he was responsible for.

Here court took a recess until one o'clock.

Court convened at the hour appointed, and the case proceeded.

Defendant FOSTER still on the stand under redirect-examination.

Here counsel for defendants offered in evidence the whole of page 105 of the ledger book marked "D," and the master was requested to make a certified copy of said page, to be used as evidence in
499 this case. Said copy is made and marked "Defendants' Exhibit 20."

Foster Re-X.

Recross-examination by WEATHERFORD:

Q. Judge Flinn has introduced page 105 of Ledger "D" in the Crawford Brothers' accounts. Will you please state if that is John A. Crawford and William Crawford's account or some other Crawford.

A. That is John A. Crawford and William Crawford's account, I think.

Q. I desire you to look at page 105 and to state if you know where that account is continued to, and turn to the page it is continued on in this book, heretofore marked "D."

A. I find it carried to page 438.

Q. What do you find on page 438—whose account?

A. John Crawford & Brother's.

Q. Does that refer to these Crawfords?

A. I think that is the continuation of that account.

(Here page 438, above referred to, of book "D" is offered in evidence by counsel for complainants, and the master is requested to substitute certified copies thereof as evidence in this case, as the original is now in evidence in another case.)

(Objection by Flinn as immaterial, irrelevant, and incompetent, as it has not been sufficiently identified.)

Said page is received, a copy made, and marked by the master "Complainant's Exhibit H."

Q. On page 105, Mr. Foster, do you know and can you explain what that erasure means?

A. I know nothing about that.

Q. Nor when it was done?

A. Nor when it was done or anything about it.

(Here a book is shown to witness which is lettered on the back "Ledger E.")

Q. State what book and whose book that is?

500 A. It is one of the books or one of the ledgers belonging to the business of the Magnolia mills.

Q. Are some of those entries in your handwriting on page 120?

A. I see some of my handwriting here.

Q. Is that the account of Crawford Bros., as carried from Ledger "D," page 438, just referred to and offered in evidence, as carried out by you?

A. I could not say as to that. I can give you the statement here as it is put on the book.

Q. I did not ask you for the statement. I asked you if that was a continuation of the Crawford Bros. account?

A. I said I could not say as to that. I would give you the statement. I know by my putting it here on this book——

Q. Whose name is written at the head of that page?

(Objection by Flinn that the page itself is the best evidence.)

A. At the head of the page is written Crawford, John Brothers.

Q. To whom does that refer?

A. That refers, I suppose, to William and John Crawford.

Q. When you wrote that at the bottom did you refer to William and John Crawford?

A. I could not say. I say I think that was stated there for John A. Crawford.

(Here the whole of page 120 of Ledger "E," above referred to, is offered in evidence by counsel for complainants and the master requested to substitute copy of the same to be used as evidence in this case, as the book itself is in evidence in another case.)

(Objection by Flinn as immaterial, irrelevant, and incompetent.)

501 Said page is received, a copy made, and marked "Complainant's Exhibit J."

Q. When did you make that entry at the bottom, which is in your handwriting, on page 120, just offered in evidence?

A. That would be impossible for me to say.

Q. Will you look at Ledger "E," on page 224, and state whether or not that is a continuation of the account of the said John A. and William Crawford, carried from page 120 of the same book.

(Objection by Flinn that the book is the best evidence.)

A. I could not say as to that, whether it is a correct statement; can't tell whether it is a continuation of the account carried from page 120 or not; but on page 224 I see an account headed "Crawford Bros."

Q. Does that refer to the same Crawfords?

A. The same Crawfords.

Q. Are not some of those entries found on page 224 in your handwriting?

A. I did not notice but one that I recognised as my handwriting.

(Here page 224 of Ledger "E" is offered in evidence by counsel for complainant and the master requested to substitute a copy thereof to be used as testimony in this case.)

(Objection by Flinn as not cross-examination and as immaterial, irrelevant, and incompetent, and the entries on the page have not been properly identified.)

Said page is received, a copy made, and marked "Complainant's Exhibit K."

Q. Mr. Foster, is Ledger "F" among these books here, or do you know where it is?

A. I don't see that here.

Q. Do you know where it is?

A. I do not.

502 Q. Did you bring or send it down to Portland with the other books?

A. I could not say as to that.

Q. Will you produce it some time during the progress of this examination, so that the master may take a copy of the pages in it that refer to the account of John A. Crawford and William Crawford to be used in evidence in this case?

A. I turned over those books to John A. Crawford and they are not in my possession.

Q. As the agent and acting for Mr. Crawford with that power of attorney, &c., will you endeavor to find that book and bring it down for examination?

(Objection by Flinn to that mode of proceeding. If they want books that they have not got they must proceed in the regular manner.)

A. I don't feel myself at liberty to take the books out of the office or out of the possession of Mr. Crawford under any authority that I have from him without his consent.

Q. If he has no objection will you bring that book down for examination?

A. If he should order me to bring it down I will do what he says respecting that.

Q. Have you any objections to bringing it down?

A. I have no personal objection, only I don't feel disposed to go to that expense myself.

Q. Why was it not sent down with the rest of the books?

A. I thought it was. Mr. Wolverton, if I remember right, spoke about the books, and he piled out the amount of books that he wished sent down, and the books, to the best of my recollection, was all packed up and sent—all that he requested.

503 Q. Did not he request all of the ledgers?

A. My recollection is that he took the books down out of the case and he piled them up in a pile and said he wanted them sent.

Q. You may look at the book marked "G" on the fly-leaf by the master, on page 112, and state if you know whose account that is on that page?

A. John A. Crawford's account.

Q. Is that a continuation of the account heretofore run as John Crawford & Bros. or Crawford Bros.?

A. I could not positively say as to that.

Q. Whose book is that and what firm kept the accounts in that book?

A. It is one of the ledgers that belonged to the Magnolia mills; the book, before it was turned over to Mr. Crawford, belonged to J. H. Foster. From the appearance of the handwriting the person that was keeping the books at that time was Robert Foster.

Q. He kept the books?

A. He kept the books.

Q. Under your direction and for you?
A. He was employed by myself as book-keeper.

(Here the whole of page 112 of book marked "G" in blue pencil is offered in evidence on behalf of complainant, and the master requested to make a certified copy of the same in lieu of the original.)
(Objection by Flinn to the use of a copy; he states that they are perfectly willing that the original shall go in just as it is, and the whole book too.)
(Said copy is made, received in evidence, and marked "Complainant's Exhibit L.")

Foster 2d Redirect.

504. 2d redirect-examination by FLINN:

(Here the attention of the witness is called to a writing purporting to be an assignment on the blank leaf, the first fly-leaf, of ledger marked "G" in blue pencil.)

Q. State who signed the writing on that page, the fly-leaf?
A. It was signed by J. H. Foster & Co. That was myself that signed it.
Q. You may state when it was signed, whether on the day on which the assignment was made or bears date, or at some other time.

(Objection by Weatherford that the paper itself and the writing thereon is the best evidence.)

A. It is dated on the 7th day of February, 1884. That is the day it was signed on.
Q. You may state whether this book, Ledger "G," contains the accounts which you say you sold to John A. Crawford, or a statement of them, as referred to on that fly-leaf.
A. It does.

(Here the whole of the book above referred to, "G," and the accounts therein, including page 112 with the others, is offered in evidence, together with the assignment on the fly-leaf, on behalf of defendants.)
(Objection by Weatherford to the book being received in evidence unless the other books containing the accounts between Foster and the Crawfords, John A. and William, are also offered in evidence.)
(Said book is received and marked "Defendants' Exhibits 21 G.")

Foster 2d Re-X.

Recross-examination by WEATHERFORD:

(Here the book "F" is shown to witness.)

505. Q. Look at page 275 of that book, and state whether or not that is a continuation of the account of Crawford Bros., and whose book it is.

A. This is one of the books that was kept in which the ledger accounts of the Magnolia mills were kept. I find at the head of page 275 the name of John A. Crawford.

Q. Is that the book that you kept your accounts in between John A. Crawford and yourself during that time?

A. This is the ledger that the accounts were posted in.

(Here page 275 of said Book "F," above referred to, is offered in evidence on behalf of complainant, and the master requested to make a copy thereof to be used in this case.)

(Objection by Flynn as not having been properly identified, and that it does not appear who kept the book, and it is incompetent, irrelevant, and not cross-examination.)

(Said page is received, a copy made and marked "Complainant's Exhibit M.")

Q. Did you have any other book or books in which you kept an account or accounts between J. A. Crawford and William Crawford and yourself than the ones that have been referred to during this examination, accounts kept during the same period of time covered by these books?

A. This is the ledger. There was journals and pass books that were used besides this book.

Q. Were the entries on the journals and pass books carried forward and placed in the ledger?

A. That was the intention, and I suppose it was done.

3 *Redirect.*

Redirect examination by FLINN:

Q. Do you know of your own knowledge whether it was done or not?

506 (Objection by Weatherford as having been gone over before.)

A. I don't know of my own knowledge whether it was or not. That was the intention and I suppose it was done.

(Here the whole of said Book "F," above referred to, and all of the accounts therein; the book and all accounts therein of Book "D" and book Journal "P" and all accounts therein, all above referred to, are offered in evidence on behalf of defendants for the purpose of showing the manner in which the said books have been kept and the transactions between Mr. J. H. Foster and John A. and William Crawford, and for no other purpose.)

Said books are received and marked respectively "Defendants' Exhibits 22 F, 23 D, 24 P, and the Ledger "V" is marked "25 E."

Addenda Correction.

Addenda.

The foregoing deposition being read to the witness, at *the* request the following additions and corrections were made, to wit:

On page 220 of stenographic notes, the same being page — of this transcript, to answer marked (1) witness adds, "I might here say that my brother deeded his interest in the mill to me at that time.

To answer marked (2), page 230, of stenographic notes, the same being found on page — of this transcript, witness adds: "There was a bill of sale on the water works and pipe that was on hand and a bill of sale of the sacks, a guarantee that he would purchase that short wheat, and a paper authorizing me to do business for him."

507 Also at answer marked (3), page 250, of the stenographic notes, the same being found on page — of this transcript, witness explains that when I said that Crawford would let me have the mill on very reasonable terms, &c., "and at all other places where the same remark occurs in this deposition," I meant to say by that that Crawford would lease the mill to me on very reasonable terms.

(Signed) J. H. FOSTER.

Parker or Parton.

FRANK PARTON called and sworn in behalf of defendants.

Questioned by FLINN:

Q. State your name, age, place of residence, and occupation.

A. Frank Parton; aged 58; residence, Weitsburg, W. T.; occupation, miller.

Q. How long have you been engaged in the milling business, Mr. Parton?

A. Forty-five years; about that.

Q. You may state whether you are acquainted with the Magnolia mills in Albany, Linn county, Oregon.

A. Yes, sir.

Q. You may state whether you worked in those mills, and in what capacity, and how long, and who for.

A. I think from 1862 to 1883; I think that is the time; as miller, running the mill for John A. and William Crawford and Mr. Altry part of the time, John A. Crawford and William Crawford for awhile longer, and J. H. Foster and John Foster for awhile, and J. H. Foster alone.

Q. Are you well acquainted with that mill?

A. Yes, sir.

Q. Were you acquainted with its condition and its capacity for making flour and its value in February, 1884, and prior to that time?

508 A. I was prior to that time; I had a pretty good idea of it at that time, for there had not been any changes made after I left.

Q. Did you see the mill in February, 1884?

(Objection by Weatherford as immaterial and irrelevant.)

A. Yes, sir.

Q. How long had you been out of it?

A. About the middle of August; I think I left in August prior, some time in August, 1883; yes, I think it was in August, 1883.

Q. What was the value of that property in the condition in which it was in February, 1884?

(Objection by Weatherford, because there is no issue on that point.)

A. Well, at that time it is pretty hard to tell; in fact, at that time there was no value to it; you could not have sold a flouring mill in February for any price; there could not have been any value set upon it at that time, for nobody would take it.

Q. Why not?

A. Why, because of depressing circumstances all the mills was bursting up at that time, all the mills in the country; you could not set a value upon it, it was worth nothing.

Q. Well, what has that mill been worth at any time since February, '84?

(Objection by Weatherford as immaterial.)

A. Well, I could not tell; I have not been living there; I don't know what the mill would be worth since.

Q. What would be a fair valuation of the mill, in the condition in which it was in February, 1884, in an ordinary time?

(Objection by Weatherford, because witness has just stated that he could not tell what the valuation of it was in Feb-
509 ruary, 1884.)

A. In ordinary times the mill would have been worth from 20 to $25,000.

Q. Have you been engaged in the milling business since you left Albany, in 1883?

(Objection by Weatherford as immaterial and incompetent, witness having testified that he has been living in a different Territory and not in this section of the country.)

A. Yes, sir; in Weitsburg, Washington Territory.

Q. Is it not true that the milling business has been depressed ever since February, 1884, and that milling property has been comparatively worthless by reason of the continued depression throughout the coast?

(Objection by Weatherford, unless the question is confined to Albany or that vicinity.)

A. It has.

Q. Were you acquainted with the brick block in Albany known as the Foster block, that Foster conveyed to William Crawford?

A. I am acquainted with the Foster block, but whether it was conveyed or who it was conveyed to I don't know anything about that.

Q. The new building, I refer to, that was put up in 1878?

A. Yes.

Q. Were you acquainted with the value of property in Albany prior to the time that you left there in 1883?

(Objection by Weatherford as immaterial.)

A. Well, not a great deal. I lived there, but then I did not know much about the value of property there.

Q. You had lived there for over twenty years?

A. Yes, sir.

Q. What was that property—that brick block—worth, in your judgment?

510 (Objection by Weatherford, as witness has just stated that he was not a judge of the value of property there, and he is incompetent to say.)

A. I would not have any idea what it was worth; none at all.

Q. You may state what, if any, improvements Mr. Foster put on the mill during the time you were there and the cost of them.

(Objection by Weatherford as immaterial and no issue on that.)

A. I—I could not tell except the last repairing that we done, but the books will show that, or ought to show it. I know the first repairs the books will show, but the last repairing was between 7 & $8,000 for water-house's work, but the balance of it—why I could form no idea at all; every year there was repairs made.

Q. You say every year?

A. Oh, yes; of course, repairs every year.

Q. Was there not a large amount of new machinery and a foundation put under the mill about the year that Foster purchased it?

(Objection by Weatherford as immaterial.)

A. Yes, sir.

Q. What improvements did he make about 1878 towards putting on an addition in front and increasing the capacity of the mill and storage?

A. I don't know whether it was in 1878, but there was a front part put onto the mill of two stories, and so on, and a warehouse building, but I could not say whether it was in '78 or not.

Q. You may state whether Mr. Foster owed you at the time you left his employ and went to Weitsburg, in August, 1883?

(Objection by Weatherford as immaterial, irrelevant, and leading.)

A. Yes; he did owe me.

Q. About how much did he owe you, and what did you do
511 towards collecting it at any time?

(Objection by Weatherford as immaterial and no issue upon that.)

A. At that time, in August, when I left there, he owed me, I think, a little—about $6,000. He paid some on it—a thousand dollars, I think—some at the bank, and took up a note that I had there along in February or the last of January. I came down to Albany and I wanted him to pay me. He said he could not raise the money, and I wanted security, and he asked me whether, if John Crawford went

on the note, whether it would be good, and I told him it would, and he asked Mr. Crawford to go on the note, and he did so.

Q. Have you the note that John Crawford went on at the time?

A. I have not, but I have a copy of it.

(Here Exhibit "16" is shown to witness.)

Q. Is that the note?

A. Yes; that is the note.

Q. You may state who paid you that note, if it has been paid.

A. Mr. Crawford paid some of it and Mr. Conner sent me the balance; I left it at the bank and Mr. Conner sent me the balance of it. I think Mr. Crawford paid me $3,000 at one time, and, if I remember right, a $1,000 order on John McCraken here for a $1,000. I have a copy of the note here (reads): a 1,000 1884 in an order on John McCraken.

Q. Mr. Conner is the banker there in Albany, is he?

A. Yes, sir.

Q. And you left the note with him for collection?

A. Yes, sir.

512 Q. Has it all been paid up?

A. Yes, sir.

Q. You may state what you know about it taking more wheat to make a barrel of flour during the season of 1883 & '4 than it had prior to that time.

A. Only by hearsay; nothing else.

Q. You may state what you know about that.

(Objection by Weatherford to witness stating what he heard through other millers.)

A. Sibson, Quackenbush & Co., or Mr. Sibson, of Sibson, Quackenbush & Co., said it took more, a great deal more, wheat to make a barrel of flour that year than any other year. He said the mills at Oregon City did. That is the only thing that I know about it, as I was not here at the time.

Q. Were they not operating at that time one or two of the largest mills in Oregon?

(Objection by Weatherford as immaterial.)

A. Yes; they were operating three of the largest mills there was in Oregon—four.

Cross-examination by WEATHERFORD:

—. Mr. Parton, will you please state whether or not this note referred to by you was made payable the first of January, 1884 or 1885.

A. 1885, I should judge. The five is marked out. It was intended for that, I should think, from the date of it.

Q. When was this $3,000 paid on that note, Mr. Parton?

A. Does it not say on the back of it? I could not tell. I can tell by this other note. When he gave the other note he paid $3,000. I can't tell when that note was given; I don't remember now.

(Witness consults a memorandum book and adds:) March 5th is here.

Q. What year?

A. March 5th, 1884, $1,512; October 20th paid $1,000, and
513 January 18th paid $500.

Q. In what year?

A. 1885; June 18th, it was.

Q. Was that about a month after the note was given that he paid you $3,000?

A. When he gave the new notes, you know, that would be March 5th, 1884; then he paid that $3,000. Then he gave his individual note and took up that note—gave his individual note for $1,512 and took up that note.

(The note referred to is Exhibit "16.")

Q. Did Sibson, Church & Co. operate, in the winters of 1883 and spring of 1884, any mill in Linn county, Oregon?

A. I could not tell you.

Q. And the four mills you referred to as being operated by them, was any of them situated in Linn county?

A. No, sir; none of them. The Salem mills was one mill, two at Oregon City, and one down here at Albino are the four that I referred to. There is one mistake about that, though; it was Sibson, Church & Co. at that time, it is Sibson, Quackenbush & Co. now.

FRANK PARTON.

Books Offered in Lieu of Excerpts Heretofore Offered.

Here the books of account of the business of J. H. Foster & Co., from which transcripts have been requested to be made by the master as exhibits hereinbefore stated, are again offered in evidence in full, and it is agreed by counsel of both parties respectively that the master need not make a complete set of transcripts from said books, as previously ordered.

Here court adjourned till to-morrow morning, December 24th, at nine o'clock.

DECEMBER 24TH.

Court convened at the hour appointed and the case proceeded, Mr. Ach appearing for the complainants.

R. S. Strahan.

514 Hon. R. S. STRAHAN called and sworn in behalf of defendants.

Questioned by FLINN:

Q. State your name, age, residence, and occupation.

A. R. S. Strahan; aged nearly 52; residence, Albany, Linn Co., Oregon; occupati-n, at present, judge.

Q. Are you acquainted with John A. Crawford and James H. Foster and William Crawford, three of the defendants in this suit?

A. I am.

Q. You may state if you were present about the sixth of February, 1884, when James H. Foster executed deeds to John A. and William —— of the Magnolia mills property and some real estate in Albany.

A. I was present, I think, at the time stated.

Q. You may state whether or not—state who prepared the deeds.

A. I did.

Q. Where were they prepared?

A. At my residence, in Albany.

Q. You may state whether or not the contract between James Foster and John A. Crawford was recited over to you by the parties at that time in regard to the sale of the property to Crawford.

A. It was.

Q. You may state what the contract was as then agreed upon and recited to you for the purpose of having you prepare the papers.

(*)A. It has been so long ago that I am not sure that I can repeat it with accuracy or in all of its details. I have nothing with which to refresh my memory, but, as I now remember it, Mr. Foster being largely indebted to Mr. Crawford and Mr. Crawford being desirous of receiving some payment or satisfaction for those debts, Mr. Foster agreed to convey to him, in payment, the Magnolia mill property, including the warehouse and machinery, the brick block on First street, and his interests in the water work*d;* he also assigned
515 to Mr. Crawford the mill books and accounts. The consideration which Mr. Crawford agreed to give was to cancel his claims against Mr. Foster and, in addition to that, to advance and pay $10,000 for the purpose of taking up Mr. Foster's liabilities to the farmers who had stored wheat with him; that $10,000 was evidenced by a promissory note, which I wrote at the time and which, I think, was to be deposited with Dr. Gray—G. W. Gray—of Albany, and to be returned to Mr. Crawford when he had taken up that amount of Mr. Foster's liabilities for wheat stored in the warehouse. I think that is the main outlines of the agreement.

Q. You may state whether or not it was a part of the agreement that Mr. Crawford should furnish to the amount of wheat that Foster was short with them or pay for it to the amount of about 20,000 bushels.

(Objection by Asch as irrevelant and incompetent.)

A. Yes; I think that it was. Mr. Foster said he thought he was short about that amount, 20,000 bushels, as near as he could tell; he did not know the amount. Mr. Crawford wished to know the extent of it, and that is what Mr. Foster told him.

Q. Was Mr. Crawford to take Mr. Foster's place in regard to that short wheat and release him from all liability?

(Objection by Asch, same as above.)

A. That is the way I understood the agreement; that Mr. Craw-

ford would perform his contract in regard to that wheat and save Mr. Foster harmless of those claims.

Q. You spoke about a note, or a paper in the form of a note, for $10,000. You may state whether that was given in payment or as a guaranty that Mr. Crawford would perform his contract in regard to that wheat.

(Objection by Asch, same as above.)

A. I understood it was simply to secure; Mr. Foster wanted
516 something, and that is what he agreed to take.

Q. You may state about what time it was in the day when you were requested to draw up the writings between them.

(Objection by Ach, same as above.)

A. I can't fix the time, though it must have been some time in the forenoon or just after dinner. I had been quite unwell and confined to my house for a few days, but was able to sit up at that time, and I remember that I prepared the papers and had them ready by evening, when they were executed.

Q. About what time in the evening were they executed, as near as you can remember?

(Same objection by Ach.)

A. Just after supper; I could not state the hour.

Q. Did you prepare that at your dwelling or at your office?

(Objection by Ach as immaterial.)

A. At my dwelling; I had not been at my office for several days preceeding that time.

Q. Is not your dwelling the next door to John A. Crawford's dwelling and very near the mill of James H. Foster?

(Objection by Ach, same as above.)

A. At the next door; an alley between his house and mine.

Q. Was there anything said between the parties at the time of the execution of the deeds or during the conversation with you or in your presence by Mr. Foster or Mr. Crawford concerning the taking of the property back at any time under any circumstances or conditions?

(Objection by Ach as incompeten- and irrelevant.)

A. Not a word.

Q. Was there anything that transpired there in the transaction itself or anything that passed between the parties that indicated to your mind that the sale was not an absolute one?

517 (Same objection as last above by Ach.)

A. Nothing whatever; but, on the contrary, the parties talked over their past business transactions—the amount that Mr. Foster owed Mr. Crawford, the length of time that Mr. Crawford had indulged Mr. Foster, &c.—and Mr. Foster told Mr. Crawford his anxiety to pay him and expressed to him his gratitude for the in-

dulgence that had been extended to him, and, so far as I could see or know, it appeared to be a complete closing up of their business.

(Here Book "G," previously offered in evidence, was shown to witness.)

Q. Examine the writing on the fly-leaf and state who wrote it.

(Objection by Ach as immaterial.)

A. I don't know who wrote that. I will state that at the time these papers were executed this book was not present. My recollection is that I prepared on a separate piece of paper a writing which, according to my memory, this is in substance a copy, and I instructed the parties to have some one copy that writing on the fly-leaf of the books and let Mr. Foster sign it.

(Here counsel for complainant moves to strike out all of the last answer after the words "I don't know" as not responsive to the question and as irrelevant and immaterial.)

Here the foregoing part of this deposition was read to the witness, and to the answer on page — of this transcript (found three pages back and marked with a "(*)") witness adds as follows: The amount of Mr. Crawford's claims against Mr. Foster was fully talked over and agreed upon. I think I can't mention all of them, but some of them are present in my mind. They *constituted* of, first, a claim of $16,000; I am not sure whether that embraced interest or not which
518 was due by Mr. Foster to Mr. Crawford, and, as I remember, I think that may have been to John A. Crawford only, and that was due as a part of the original purchase price of the Magnolia mills; second, Mr. Crawford had endorsed for Mr. Foster in some bank in Portland, perhaps the Bank of British Columbia; I am not sure as to the amount that Mr. Crawford was to pay. Mr. Crawford had also endorsed or became security to Frank Parton, upon which there remained due $5,000. I am not sure whether that embraced the interest or not; Mr. Crawford was to pay that. Mr. Crawford had also become security to John Connor, the banker in Albany, for an amount—it seems to me that that was from 5 to $6,000. Mr. Crawford was to pay that; that is all that I distinctly remember now. Those items, with the amount that Mr. Crawford was to pay on the wheat, satisfied the purchase price of that property. It may have been, however, that there were other items that have escaped my memory.

Q. About what amount did the purchase price come to, as you now recollect it?

(Objection by Wood, for complainant, as incompetent and not the best evidence.)

A. My recollection is that the amount was something over $60,000, exclusive of what Mr. Crawford was to pay on the wheat. It seems to me that that amount being added made nearly $74,000. That was to be the purchase price of this property.

Q. Will you please try and refresh your memory and state whether or not there were not other notes held by John A. Crawford alone

against James H. Foster besides those amounting to $16,000 which you think John and William held jointly?

A. Since you have referred to that matter, I think there was one note of something over $5,000 that Crawford held individually.

Q. Was not there one of about $13,000 also spoken of at that time?

A. I can't distinctly remember that; it may have been; but I know when the figures were added up and the items were
519 enumerated and agreed upon between the parties it amounted to over $60,000.

Q. You may state whether there was any sacks included in the sale by Foster to Crawford and whether there was any dwelling-house, if you recollect.

A. Yes; since you have mentioned it, all of the sacks that were about the mill and warehouse were included, and also Mr. Foster's dwelling on the block of ground on which he then resided in Albany.

Cross-examination by WOOD:

Q. Judge, in the matters you have testified to are they matters within your own knowledge or matters which you received from the parties who came to you in this business—that is, the statements and admissions made to you by the parties? Are they within your own personal knowledge?

A. Some of the mare matters within my own personal knowledge; others are matters that the parties talked over in my presence at the time, and related to facts of which I have no personal knowledge.

Q. Well, could you briefly indicate those matters of which you have personal knowledge yourself? Just segregate them. Of course I don't mean to repeat your whole testimony.

A. I have personal knowledge of the writings that I prepared, and I have personal knowledge of the conversations and agreements between the parties at the time.

Q. Who were present at this interview? Am I correct in supposing that? I ask whether or not there was more than one interview in your presence—between the parties I mean. When you were acting for the parties was there more than one interview?

A. There were two, I think.

Q. Who were present at the first interview?

A. I think that Mr. Foster and Mr. Crawford called at my
520 house alone at the first interview. I think they were together.

Q. And who were present at the second?

A. Mr. Crawford, Mr. Foster, Mrs. Foster, and I think Mr. Foster's sons, Robert and James. I am not sure that they remained during the entire transaction. It was in the evening when they were there. It seems to me they retired before the business was completed—that is, Robert and James.

Q. About how long did those interviews last, respectively?

A. I should judge that the first interview lasted for one or two

hours; I have no means of knowing. The last was briefer, perhaps not over half an hour, because the papers were all prepared at that time; nothing was to do but to execute them.

Q. By which of the parties were you retained?

A. Well, I don't know as I was retained by either, particularly. It was at their joint request that I prepared the papers, as I understood it.

Q. Well, had you formerly been counsellor for either or both?

A. I had formerly been attorney for Mr. Crawford in some matters awhile. I have never been counsel for Mr. Foster in any matter of importance. He had sometimes consulted me about unimportant business matters.

Redirect.

Redirect examination by FLINN:

Q. Had you not been counsel against Mr. Foster in several important matters and for quite a number of years?

A. Yes sir.

Recross.

Recross-examination by WOOD:

Q. For whom did you act as counsel against Mr. Foster?

A. In the most important matter that I now call to mind I acted as counsel for Thomas Monteith in a suit between Mr. Foster and himself touching water rights.

521 Q. Did you act as counsel for Crawford in any matter against Mr. Foster?

A. I think not.

R. S. STRAHAN.

John A. Crawford.

JOHN A. CRAWFORD, one of the defendants, called and sworn in behalf of defendants.

Questioned by FLINN:

Q. State your name, age, residence, and occupation.

A. John A. Crawford; aged about 71; residence, Albany, Linn county, Oregon; occupation, miller.

Q. You may state what you know about purchasing the Magnolia mills and the brick block and the dwelling-house mentioned in the complaint in this suit from James H. Foster on or about Feb. 6th, 1884.

A. Some time prior to the 6th of February I heard that Foster was wanting to borrow money on his unencumbered real estate. I had endorsed for him to a large amount and he was also owing me and my brother a large amount unsecured. I went to him and told him I wished to be secured for what he was owing myself and my brother. He told me that he did want to borrow money and to secure it on his property. He was hard up for money and he

would like to borrow, and if I could loan him the money he would give all his property as security or sell it or something to that effect. I told him I did not want to loan money—any more money—nor I did not want to buy any real estate. I just merely wanted security for what he was owing me. He then went on to state that if I would he would give me security on his real estate. He did not think that he could borrow from any other person on a second mortgage, and he wished me to let him have more money or he could not transact any more business. I told him that I did not want to loan any money, and he said that he had a good deal of flour on hand that was unsold, and the farmers was pressing him to buy wheat and he had no money to pay them for it, and that he
522 had ground and shipped more wheat than he had bought, and that farmers held receipts against him for wheat and for which he had no wheat to give them nor money to pay for it, and I said that I would study over the matter and let him know. Well, I studied the matter over and I told him that I thought it was too big a responsibility for me to take all his property and have it on my hands. Then we went to work and figured up what the amount was that I had endorsed and what he was owing me and my brother, and found the amount. I went to my brother and consulted with him as to what he thought it was best to do. He said that I might do just as I had a mind to; that Foster was owing him money, and that he would like to secure his part as well as mine, and that if I thought it was best I might buy it. I studied it over for some time; went to Foster again and told him to look up the amount of property that he wished to sell or secure me by the mortgage, whichever we could agree upon. He made out a list of the property, and put his price on all of it at the lowest figure that he said he would take for it. I then took time for it to study it over and see which way I could serve myself best, and I then concluded that I would buy his property at the figures proposed, and went and he and I concluded the arrangements and settled that he would sell, and I said that I would buy. We then called on Judge Strahan to make out the deeds.

Q. You may state whether you related your agreement to Judge Strahan and whether he figured up the several items for you and in your presence.

A. I think we named the price on each piece of property, the value of everything, and what the agreements were that Foster and I had made.

523 Q. State whether or not the several items constituting the consideration that you were to give Foster for the property were figured up at the time by Judge Strahan or enumerated in his presence.

A. They were.

Q. You may state what the consideration for the property was, if you remember, that you purchased of James H. Foster at that time.

(Objection by Wood as incompetent.)

A. I think it was somewhere about $75,000.

Q. You may now state how that consideration was paid or to be paid, as near as you can.

(Objection by Wood, same as last above.)

A. That consideration was to have been paid by me paying the notes I had endorsed for to different parties and what he was owing me on individual notes and my brother on the same and some book accounts; also there was about 20,000 bushels of wheat that he was short in his stock there in the warehouse for which there were receipts given by him to the farmers, and I was to relieve him of all responsibility of these warehouse receipts and pay for them and deliver them up to him, which I agreed to do, and I think that was about all of the consideration that he was to get for the property.

Q. State whether or not you were to surrender up and cancell all of the notes which your brother and you held against him at that time as a part of that consideration.

A. That was part of the consideration. I agreed to surrender my notes and the notes held by my brother against him and all of the notes that I had endorsed for him to different parties and the book accounts and the wheat receipts from the farmers, amounting to something like 20,000 bushels.

(Here the notes marked "Exhibit 7" are shown to witness.)

524 Q. State whether or not those five notes, marked Exhibit 7, were a part of the notes that were to be surrendered up at that time to be cancelled.

A. These five notes were surrendered to Foster before the purchase of the property.

(Here the six notes marked "Exhibit 6" are shown to witness.)

Q. State whether those notes were to be surrendered up as a part of the consideration as the purchase price of this property.

A. These notes were to be surrendered up as a part of the payment for that property.

Q. You may state what you know about James H. Foster owing those notes at that time; whether he did owe them, in fact, or whether they had been paid or any part of them paid at that time.

A. These notes I know was not paid nor any part of them at that time or before the purchase of the mill and other property. They were due at the time.

Q. State whether or not you surrendered them up to him as a part of the purchase price of the property or not.

A. I did surrender them up as a part of the purchase price.

(Here note marked "16" is shown to the witness.)

Q. You may state whether you paid that note as part of the purchase price of the property.

A. I surrendered that note as part of the purchase price for the property.

Q. How much did you pay on that note?

A. Well, I could not say exactly.

Q. The full amount?
A. I paid the full amount, with interest, for all the note calls for. The note calls for $4,810, with interest.
Q. Is that your signature?
A. Yes, sir; that is my signature.
525 Q. Was that not given for your debt or J. H. Foster's?
A. It was for J. H. Foster's, I think.
Q. Don't you know?
A. I do know.
Q. Did you get any consideration for that note?
A. I did not.

(Here notes marked "Exhibits 10, 11, & 12" are shown to witness.)

Q. You may state whether or not those notes were paid at the time you purchased the property of Foster except what is endorsed on them.
A. There was no part of them paid, only what is represented by the endorsements on the back.
Q. You may state whether or not those notes were then owing to you by James H. Foster.
A. They were.
Q. You may state whether you surrendered them up to him as a part of the purchase price of this property.
A. I did.

(Here Exhibit "8" is shown to witness.)

Q. State whether you signed that note as one of the makers.
A. I did.
Q. For whose benefit was it given?
A. J. H. Foster & Co.
Q. Did you get any of the money for your own use or benefit?
A. I did not.
Q. State who paid it.
A. I did.
Q. To whom?
A. To Mr. Townsend, the agent of the Bank of British Columbia.
Q. The full amount of it?
A. Yes, the full amount, with some interest.
Q. You may state whether that is one of the notes which you say you endorsed for Foster and was to pay as a part of the consideration for this property.
A. That is one of them.
Q. Did you pay it and surrender it up to Mr. Foster?
526 A. I did.

(Here notes marked "Exhibit 9" are shown to witness.)

Q. You may state whether you signed both of those notes.
A. I did.
Q. For whose benefit were they signed?
A. For J. H. Foster & Co.

Q. Who got the money that they were given for?

A. I presume J. H. Foster did.

Q. Did you get any of it or any benefit from it?

A. I did not.

Q. You may state what portion, if any, you paid.

A. I paid $5,000, with interest, on the $5,000 note, and I paid $1,000 on the $6,000 note, with a little interest—whatever was due.

Q. Were those notes a part of the notes which you had endorsed for Foster and was to pay for this same property?

A. They are the same notes.

Q. You may state whether you did pay them and surrendered them up to Mr. Foster.

A. I paid them and surrendered them up to him.

Q. You may state what you did towards purchasing the short wheat and relieving Mr. Foster from that liability, how much wheat you purchased, if you know, or gave your receipts for in lieu of Foster's.

A. I purchased and paid for the greater portion of 20,000 bushels. I could not say exactly how much. The balance of it I gave my warehouse receipts for until the parties came and sold it.

Q. After the purchase of the property by you what did you do towards taking possession of the same and managing it, if anything?

A. The next day I went down to the mill and I engaged one of the men there; asked him if he would work for me, as I had
527 bought the mill from Foster and wanted some one to take charge of it. Mr. Beam said that he was discharged by Mr. Foster and would be very glad to stay on in my employ, and he did so and is still there yet.

Q. You may state whether or not you have been acting as agent for your brother William.

A. Yes, sir.

Q. How long?

A. Well, ever since the time he came to this coast, which was in 1854, and up to the present time.

Q. Have you transacted all or nearly all of the business for him?

A. I transacted it all. He scarcely transacted any busines at all.

Q. You may state whether you acted as his agent in this purchase.

A. I did.

Q. You may state whether or not you took the notes marked "Exhibit 6" as his agent or whether he did the business himself.

A. I took the notes and did the business for him.

Q. You may state whether or not you took the notes marked "Exhibit 7" and did the business in connection with them.

A. I took them. I sold the property and took them.

Q. You may state what was the consideration of the notes marked "Exhibit 6;" what they were given for.

A. The consideration of the notes marked "Exhibit 6" was five

notes marked "Exhibit 7," which were surrendered for those six notes.

Q. State whether they were surrendered up and new notes given for them, if you know or recollect at the present time.

A. The reason they were given up was my brother was notified that he held a mortgage against Foster, and that he would have to pay taxes on it, and my brother told me he thought it would be better not to pay the taxes on the mortgage, for Foster had agreed to pay the taxes on the notes, being as they were issued at a less rate of interest, and as he had agreed to pay the taxes on them he
528 did not think it would be right to pay double taxes on it, and he told me that I might take them up and cancel them, and I told him that he would have to go and cancel the mortgage, and he did so.

Q. Was that about the time the mortgage tax law went into effect?

A. I think it was about the time, and he went and cancelled the mortgage.

Q. What was the arrangement that was entered into about the taxes by John Foster and James H. Foster?

A. Well, the taxes on them was to be paid by — Fosters.

Q. What consideration in the reduction of interest, if any, was made to Foster in payment for the taxes by him?

A. There was two per cent.

Q. What was the ordinary rate of interest in Linn county at the time of the execution of those notes?

A. I think it was twelve per cent.; I think there was no limit on notes at that time. It had been 18 and 20 per cent. previous to that time, but I think at the time they were given it was 12 per cent.

Q. What arrangement had been made, if any, about the payment of taxes at the time notes marked "6" were executed?

A. The same arrangement was made with regard to them.

Q. What was it?

A. I told my brother that he would have to reduce the rate of interest, and the accumulated interest, to charge no interest on that if he did not pay the cash, and Foster was to pay the taxes on them, and they were drawn up for interest at 8 per cent. with no interest on the accumulated interest.

Q. What arrangement about the payment of taxes was made at the time the notes marked 10, 11, & 12 were executed, if any, between yourself and Mr. Foster?

A. The same arrangement in regard to taxes was made on
529 those notes with this; Foster was to pay the taxes.

Q. How was that to be done in regard to all the notes; how was Foster to pay the taxes?

A. Well, I was not to give them in as indebtedness against Foster, and Foster was not to charge me with his indebtedness—something to that effect.

Q. He was not to take them out of his indebtedness?

A. He was not to take them out of his indebtedness on his property as against me.

Q. Who has had charge of the Magnolia mills and the warehouse connected with it since this purchase by yourself from Mr. Foster, and who has operated it, or for whose benefit has it been operated?

A. I had charge of it myself, and whoever I had a mind to employ, he took charge and done the business for me.

Q. You may state what arrangements you made, if any, with James H. Foster to work for you, and when that arrangement was made.

A. That arrangement was made. I asked him if he would consent for to assist me in managing the business of the mill. I had been out of the milling business for 18 years—did not know how business was conducted or transacted; I did not know—the mill was all changed over, new machinery in it that I did not understand, and I wanted him or some one to assist me until I could get the hang of the business, and he had been in the milling business, and I thought if he would consent to assist me I would rather pay him a salary.

Q. When was that arrangement made?

A. That arrangement was made before he executed the deeds, I think, and it was mentioned in Judge Strahan's house.

530 Q. State whether or not Foster has remained in your employ ever since.

A. He has remained in my employ ever since.

Q. What property have you to look after besides the Magnolia mills?

A. I have the water works, the Santiam ditch, besides two or three farms; a lot of horses and cattle, besides a good many other things.

Q. State whether you keep a good many men in your employ.

A. I have a good many men in my employ; last summer I had four men employed; I have a good many men constantly employed; sometimes four, and sometimes a good many more than that.

Q. You may state what has been Mr. Foster's duties, and what he has done as your employee.

A. His duty was to stay about the mill and office principally, and attend to people coming there on business, and to look after the other men to see if they attended to their business, and to look after the property when I was not there.

Q. Was he also to look after the Santiam canal and the improvements to be attended to on that?

A. Yes, sir.

Counsel for complainant objects to his leading the witness; counsel for defendants claims that he is doing it for the purpose of brevity. Objection is urged by Wood to his leading questions.

Q. Is it not true that you have had in your employ since 1876 men constantly to keep the Santiam canal in repair?

A. I keep one man constantly employed on the Santiam canal to keep it in repair, and he has authority to go and get men to help him to keep it in repair whenever necessary; sometimes he can do it all himself, and sometimes he has to get men to help him.

531 Q. Was not James H. Foster one of the original projectors and builders of that canal?

Objection as leading by Wood, and a general objection is entered to all leading questions.

A. Yes; he was.

Q. What did you do after purchasing this property towards taking possession or toward control-ing the brick block deeded to your brother William?

A. I think I went round and notified them that he had bought the property, and that they would be responsible to me for the rents.

Q. Was the property rented?

A. It was rented.

Q. Who did you notify to be responsible to you?

A. I think I notified Mr. Blain, Mr. Powell, Fosha & Mason, and I think nearly all that was renting it.

Q. Do you mean the tenants of the property?

A. Yes, sir.

Q. Who has collected the rents for the property since that?

A. I think I have collected some myself, and Mr. Gray has collected some when I was not around.

Q. For whom did he collect?

A. For my brother and for myself.

Q. Has Foster collected any of those rents?

A. I don't know that he has collected any; only as in settling up the mill accounts where parties was owing water rent, in settling up the accounts and putting in the rents towards paying up the mill accounts.

Q. I mean on his own account has he collected in any?

A. No, sir.

532 Q. What arrangements did you make with him about keeping the dwelling that he has occupied since the sale with Foster?

A. He wished to remain in it, and I told him he could do so for awhile; if I happened to sell it I could give him another house.

Q. You may state whether you really needed Mr. Foster's services after the first year after the completion of the sale.

A. Not particularly, but I would have had to employ another man to attend to the business that he does.

Q. Are you acquainted with the value of the property that you purchased of Mr. Foster at that time?

A. Well, I could not say as to that. I know what I bargained to pay for it and what I did pay for it. Whether I paid too much or too little I can't say. I think I paid too much for it.

Q. What was the Magnolia mill property, including the warehouse and machinery, worth at the time you bought it?

A. I don't know what it was worth. I think it was worth perhaps 25 or $30,000. There had been a great deal of money expended on it. It had cost at one time and another a great amount of money.

Q. Is it not true that at that time the milling business throughout Oregon and throughout the Pacific coast was greatly overdone and large losses incurred that season?

A. Yes; there was large losses by nearly all the millers engaged in the milling business.

Q. And on account of that had not mill property depreciated a great deal?

A. Yes; it had depreciated, and also another milling process called the roller machinery was introduced which involved a great deal of expense.

Q. Was there any roller machinery in this mill?

A. Yes; both roller and burs.

533 Q. How much of the roller, and how many burs?

A. Four set of roller and five sets of burs.

Q. Has the milling business ever recovered from the depression at that time fully up to the present time?

A. Very little, if any.

Q. Is it not true that mills and milling property is comparatively worthless and has been ever since you bought that property?

A. These bur mills are comparatively worthless, and the roller mills, too, have depreciated to a large extent, and none of it can be sold for anything like the cost of it.

Q. What is that Magnolia property worth now?

A. I believe I would take for the mill $20,000.

Q. I meant the mill, machinery, and the warehouse.

A. Well, I meant the warehouse, mill, and all the machinery with it. I would take $20,000 for it now.

Q. Is it not worth a great deal more than when you purchased it?

A. I think it is. I have spent a great deal of money in fitting it up since.

Q. That brick block that was deeded to your brother. What was that worth at that time?

A. I could not say. I think at that time the brick block was worth about $20,000.

Q. What is it worth at the present time?

A. I could not say as to that.

Q. Is it in as good condition as it was then?

A. It is in better.

Q. Have you improved it?

A. I have.

Q. How?

A. I have extended it out 20 feet, and built up offices, &c.

Q. In which direction have you extended it?

A. North. After I purchased it I had to reduce the rents.

Q. Why?

A. On account of dull times, and the parties that was in it

534 said they could not pay the rents they had been paying.

Q. About how much have you expended in improving it since you purchased it?

A. I could not say exactly. I think about $20,000. I have not completed it yet.

Q. What was the dwelling-house and the grounds that went with it worth at the time you made the purchase—which J. H. Foster occupies?

A. I could not say exactly the worth of it. When Foster bought it he paid $3,000 for it, and when I bought it I paid him $2,500, but there was two lots struck off of one side, and his wife did not sign the deed, and I thought I paid more than it was worth.

Q. You mean that he had sold two lots that you did not purchase?

A. Yes; and his wife would not sign the deed.

Q. What is it worth now?

A. I could not say, but I would be willing to take $2,500 for it now. I have offered it several times since then for that.

Q. What is that little house that Gary occupies near the mill worth?

A. Well, I suppose it is worth $500 or near that. It is in a part of town that property don't sell very well, but it is close to the mill and is handy for one of the hands, and is worth more to me than to any one else, as it is across the street from the mill, and handy for one of the hands to live in and attend to it.

Q. Was Ashby Pearce present when you and Foster made the bargain?

A. He was not. I would state that when I made the contract or bargain I thought I was getting all of that block was the reason I paid so much for it as I did.

Q. Was not all of it deeded to William Crawford?

A. No, sir.

Q. How much was deeded to him, and who got the rest of it?

A. There was three stores deeded to my brother, and all
535 the rest of it deeded to Ashby Pearce. The block was mentioned, and I thought I was getting all of it, but I was not.

Q. In other words, you thought you were getting all of it, including that part that was deeded to Ashby Pearce?

A. Yes, sir.

Q. How soon after the trade did you learn that you did not have it all?

A. The next day.

Q. You learned that in the court-house?

A. I looked at the number of feet he had deeded to my brother in the deed and I went and stepped along the street and I found it was not so many feet as the block occupied, and I went and examined the deeds and I found he had deeded it to Pearce.

Q. Did you know anything about the trade to Pearce at the time you made the bargain?

A. I did not know anything about Pearce at all.

Q. Did you know anything about their business at all?

A. No, sir.

Q. About how many sacks did he turn over to you, and what were they worth?

A. I could not say how many there was. I have no knowledge

of how many. They had been used a good deal; a good many of them had.

Q. What was their quality—flour sacks or burlaps?

A. They were burlap sacks, and the mice had entered them and done considerable damage, too. I suppose—well, I could not say how many—thousand- of them were useless.

Q. State what Foster's interest in the water works was that he sold to you at that time and what it was worth.

A. I could not say what they were worth. Foster managed them.

Q. First state as to what his interest was.

A. He was to have had one-half interest in the water works by paying one-half of the cost of building them, but he did not pay his share of the outlay of the works; I paid the most of it
536 myself. He laid a part of the pipes and started them and collected all the rents and I never received any benefit from them until after I had purchased them from him.

Q. Is it not true that you purchased and paid for all the iron pipe?

A. I purchased and paid for all that was purchased in Philadelphia and he purchased what was bought in Portland, and I paid for all of that afterward.

Q. State what was paid for all of the works by him and you.

A. I never knew what it was all worth; I knew what I paid for the Philadelphia pipe. Mr. Ladd loaned the money to buy it and I and Foster gave him our joint notes, and I lifted them and paid off the notes.

Q. I am asking what it was worth at the time of the sale?

A. Well, I don't know. Foster told me at the time of the sale that all the interest he had in it would be worth about $3,000.

Q. Was the whole of the works worth $10,000?

A. Yes; I think they were worth $10,000 and more.

Q. Had they cost you that for the whole—you and Foster?

A. Yes; something about that. I could not say.

Q. Who has been operating those works since?

A. I have.

Q. Who has received the rents and profits?

A. I have.

Q. There was something said about Mr. Foster owing you water rent. What was that water rent for?

A. That was for the water to run his mill; the Magnolia mill.

Q. Who furnished that water?

A. I did; from the Santiam canal.

Q. You leased water to him, did you?

A. Yes; he had leased it from the original company.

Q. You bought out the property and let the lease run on?

A. Yes.

Q. How much did the lease he had amount to?

537 A. I think about $600 a year was the amount specified in the lease.

Q. That Santiam ditch is about twelve miles long, is it not?

A. Yes.

Q. It supplies all the water for power, &c., in Albany, does it not?

A. About all, the Calapooa supplies some and that the balance.

Q. Do you recollect the amount of book accounts that Foster owed to you at the time?

A. The book accounts amounted to about—between 5 and $6,000. I don't remember the exact amount.

Q. Was that included in the purchase of this property?

A. That was a part of the purchase price for that property.

Q. Mr. C. H. Stewart testified that he had a conversation with you soon after the sale from Foster, and that you said to him, in substance, that some notes, given at the original purchase of the mill, had turned up within the last few days unpaid; that you had sold them many years ago and endorsed them, and had supposed that they had been paid a long time before. You may state whether you had a conversation with Mr. Stewart at the time he referred to; and, if so, what was said.

A. Shortly after the sale, I think the next day, I took the deeds over to get them recorded. I had a few minutes' conversation with him, but have no recollection of anything said about the notes; no recollection of anything of the kind.

Q. As a matter of fact had those notes been sold and endorsed by you or by William Crawford?

A. They had never been sold nor endorsed by me or William Crawford.

Q. Did you have any conversation with Mr. T. I. Anderson coning the sale by Foster to you?

A. Mr. Anderson had a conversation or two respecting Foster—what Foster was owing to Anderson; he told me that Foster was owing him.

538 Q. Mr. Anderson testifies that in that conversation he asked you if you had anything to do with that mill now, and that you said, "Oh, that is all settled; I have nothing more to do with that mill than you have." How about that?

A. I had no such conversation with Mr. Anderson to that effect.

Q. He said that in another conversation he told you that you would have to give an account for purchasing that mill in time to come, and that you said you did not know that you had any more account to give than a horse. How about that?

A. I never used any such language; no such expression to him or any other person.

Q. He further states that in a conversation he had with you that you said that you had got $20,000 from the Bank of British Columbia and that Mr. Foster said that he had got it. How about that?

A. I think it is merely an imagination in his own head. I never got $20,000 from the Bank of British Columbia in my life, and I know I never told him what was not so.

Q. Had you endorsed notes for other parties in that bank to that amount?

A. I expect I had.

Q. Were you and Anderson talking about that at that time?

A. I don't think we were.

Q. What did you say to him, if anything, about having to raise $20,000 for Foster for any purpose?

A. I may have told him that I purchased; that I may have had $20,000 or more to raise for to pay for the mill, for what I had endorsed on and what I had to pay out to the farmers for Foster on the short wheat in the mill.

(Here court adjourned till half past ten o'clock a. m. Monday, December 27th, to meet at the same place.)

539 Monday, December 27th, the court convened at the hour and place appointed. Defendants appeared by their attorney, L. Flinn, and complainant by his attorney, J. K. Weatherford, and the case proceeded, JOHN A. CRAWFORD still on the stand in direct examination.

Questioned by FLINN:

Q. Mr. T. I. Anderson claims that he had a conversation with you and that you told him that you had nothing more to do with the mill than he had. You may state if you had such a conversation; and, if so, when was it?

A. I can't recollect any conversation of the kind. I don't think I had any to that effect.

Q. You may state if you had a conversation with him soon after the sale by Foster to you of the mill property.

A. I think I did, two or three weeks afterward.

Q. State what he said.

A. He said that Foster was owing him a large amount of money, and wanted to know if I would go Foster's security for it, and I told him I would not.

Q. Was that the whole of that conversation?

A. Oh, there was a great deal more of it than that, but I can't recollect the whole of it; he said that if he had known that I was running Foster—furnishing him with money—he would not have furnished it to him, and I told him that I did not know that he had furnished Foster with money, or I would not have furnished him, or endorsed for him, or something to that effect.

Q. Was that the only conversation between you and T. I. Anderson in reference to Foster's affairs after the sale?

A. I think it was. I had several conversations with him, but that is about the only one that I can recollect.

540 Q. W. D. Baltomore testifies that he heard a conversation between you and other gentlemen near Foster's office, and that you said you had endorsed for Foster on several notes, some of $5,000 and some of $10,000, and they came on to you for them and you had to raise the money, and that you found the notes were not paid, and that you asked Foster about it, and he said the interest had been paid, but the principle had not; that the first note was $5,000; then you found another of $10,000, and that you found different notes there; that the interest was paid, but the principle was not paid on all of them, and that it amounted to between 32 and

$35,000, and that you found them at the Bank of British Columbia, and that you asked the agent why he had not let you know, and that he answered by saying he considered you as good as the bank, and that you said you had to raise the money in a short time. You may state whether you had such a conversation as that, either with Mr. W. D. Baltimore or any person in his presence, and whether the pretended facts related therein are true or not.

A. I have no recollection of telling Baltimore or any other person them statements. I may have said that I had endorsed notes for Foster and other parties for about that amount. I never said that I had nothing to pay for Foster except $5,000. I have paid for other parties, but not for Foster.

Q. As a matter of fact, did you have notes upon which you were liable in the British Bank of Columbia to the amount of 32 or $35,000?

A. I think not.

Q. What amount was there there at that time or about that time?

A. At that time there was about between 8 and $9,000 or $10,000.

Q. I have reference to what you were liable for Foster.

A. $5,000.

541 Q. If there was any other note there upon which you were liable as security, for whom was it and whose note was it?

(Objection by Weatherford as immaterial whether there were other parties for whom he had endorsed.)

A. I endorsed a $12,000 note for Thomas Montieth & Son, and I had to pay $8,400 principal and I could not say how much interest. It amounted to some thousand dollars interest. I don't know how much.

Q. Was that Montieth note in the bank at the time of Foster's failure, and were you held for it?

(Objection by Weatherford, same as above.)

A. I was.

Q. And is that the Montieth that testified in this case?

A. That is the same Montieth.

Q. He testifies that you said that if he had transferred his property at or about that time to you you would have brought him out all right, as you were doing with Foster, or words to that effect. What do you know about that conversation?

A. Well, I don't know anything at all about it that I can recollect.

Q. Did you have any such conversation?

A. Well, I don't think I did, for I was wanting nothing and had nothing to do with his property.

Q. Is it not true that Thomas Monteith gave you a second mortgage upon all of his property to secure you for the payment of this $8,000 that you had to pay the Bank of British Columbia?

(Objection by Weatherford as immaterial.)

A. He did.

Q. Was not that mortgage foreclosed at the time the first mortgage was foreclosed, and for how much did the property sell?

(Objection by Weatherford as immaterial.)

542 A. I was not at the sale; I don't know the amount; it sold for the amount of the first mortgage and no more.

Q. Were you willing to take Mr. Monteith's property for the amount of the first mortgage?

(Objection by Weatherford as immaterial.)

A. It was offered to me and I would not accept it.

Q. For the amount of the first mortgage?

A. Yes.

Q. Mr. Monteith also testifies that about two years ago he had a conversation with you, in which you told him that the mortgage given by Foster to your brother was paid off long ago.

A. I have no recollection of such a conversation.

Q. As a matter of fact, was not that mortgage ca-celled of record about two years ago?

A. I believe it was.

Q. And Foster's property released from the effects of the mortgage?

A. I believe it was about two years ago or prior to that the mortgage was released and cancelled.

Q You may state whether or not Mr. Monteith is on good terms with you.

(Objection by Weatherford, same as above.)

A. Well, he is not on very good terms. He told me that I was one of a cyndicate up at Corvallis that wanted to rob him of his property, and that he would sell every drop of his blood, of his heart's blood, but he would have satisfaction.

Q. When was it that he told you that?

A. It was along here this last fall, after the sale of that property of his nephew, Duncan Monteith, to the O. P. Col. Hogg bought it.

Q. V. H. Caldwell testifies that, in a conversation that he had with you, you told him that you had bought the property and that Foster would run the mill as he had been running it before. You may state whether you had a conversation with Mr. Caldwell

543 about that time, the time of the transfer; and, if so, what was said on the subject referred to above.

A. I had; I think he told me that he had a large amount of wheat there, and he wanted to know if I could either buy the wheat or give him a warehouse receipt for what was there. I told him I would. He said that he would sell, and I think I bought his wheat and gave him my note for either thirty or sixty days.

Q. I want to know what was said about the mill and about the wheat.

A. I said that I had bought the mill, that Foster would attend to

that, that I did not know anything about it, and that any other business that I had to attend to Foster would attend to it.

Q. Mr. W. H. Goltra testifies that in a conversation he had with you in 1883 you told him that Foster neither owed you nor had you any interest in the mill. How is that?

A. I can't recollect any such conversation with him or anybody else.

Q. He also states that in that conversation he asked you concerning Mr. Foster's financial circumstances and what interests you owned in Foster's mill. State what you know about that conversation, if you had any such with him.

A. I have no recollection of having had any such conversation, and I had no such interest in the mill in 1883 that I know of.

Q. State whether Mr. Goltra ever consulted you about Foster's financial standing in 1883 or prior to the sale of the mill by Foster to you.

A. He may have talked to me—I don't recollect—though, about Foster's financial standing. I did not know what that was. He appeared at that time to have a good standing in the community. Whether I had such a conversation or not I don't remember.

Q. Mr. W. H. Goltra testifies that after the sale of the mill
544 from Foster to you that he had a conversation with you near his store, and that you said that Foster owed you $76,000, and that he asked you how you came to let him owe you so much without security, and that you said the most of it was in the Bank of British Columbia, old notes that you supposed was paid, and that the interest had accumulated to a large amount. State about that conversation, if you had such.

A. I don't recollect of having that conversation.

Q. Did you have any such conversation as to what Foster owed you after the sale and as to what you paid for the property with Mr. Goltra?

A. We may have had a conversation, but I don't recollect; and if I told him what I paid it was correct.

Q. You may state whether you told him that Foster owed you $76,000.

A. I don't think I could have told him anything of the kind, for he was not owing me that amount.

Q. You may state whether you told him that the amount of what he owed you was in notes of the Bank of British Columbia.

A. Well, I did not tell him any such thing, for it was not so. I did not tell him anything only what was so, if I told him anything.

Q. J. L. Hill testifies in substance that in a conversation you had with him before the sale of the property by Foster to you that you said that Foster had owed you at one time about 20 or $24,000, but that it was paid, or words to that effect; what was there about that conversation? State how it was.

A. I can't recollect what conversation I had with him at that time. There was one thing I do know: if people was to try to find out my private affairs I gave them an evasive answer, that I did not know or I do not recollect, or something of that kind.

545 Q. J. L. Hill says that you told him in that conversation that Foster had given $5,000 to the railroad; how about that?

A. Well, I never told him anything at all about that, for I never knew what Foster did give to the railroad, therefore I never told him.

Q. Mr. W. H. Goltra and J. O. Goltra both testify to a conversation that you had with W. H. Goltra concerning the storage of wheat after the sale of the property by Foster to you, and that you told W. H. Goltra that whatever agreement Mr. Foster made it was all right concerning the storing of wheat?

A. Well, perhaps I did.

Q. You may state whether you had authorized Mr. Foster to make agreements for you in regard to the storage of wheat.

A. I think I did. I told him that if he had any friends to store wheat to tell them to come on and I would store for them, as I did not think that parties would want to store wheat with him on account of the failure of parties that owned the mills there; and he said he thought he had some friends that he could get to store wheat with me.

Q. The Albany mills had also failed that same year, had they not, that were owned by Monteith & Sons?

(Objection by Weatherford as immaterial.)

A. Yes, sir.

Q. The same year that you purchased this property from Foster?

A. Yes.

Q. And the farmers were afraid to store in the mills, were they?

(Objection by Weatherford as leading and immaterial.)

A. I think so.

546 Q. Mr. Goltra also testifies that in that conversation that you said that Foster was all right if people only understood him, and that you spoke as referring to his financial status. How about that?

A. Well, I don't recollect about that. I thought Foster was all right as far as I knew.

Q. What do you mean by all right?

A. Well, that he would pay his debts if he had time to. I knew nothing about him at the time that I purchased the property. He told me he had a great deal of flour on hand, and that if it could be sold to good advantage that he could come out all right.

Q. Were you present at the time that W. C. Morgan sold a portion sold his wheat to Foster?

A. I was present at the time.

Q. You may state what took place in regard to wheat and the manner of paying for it.

A. Well, he said that he did not want to sell his wheat, only a portion of it, but that he would sell all but a thousand bushels if he would pay the cash for it, and I told him all right that I would buy it, and I got Foster to go to his books and figure up how much wheat he had there, and I went off and got the money to buy the wheat, and

when I came back he had a paper in his hand, I think how much he would sell and the amount of it, and I paid him the money and gave him a receipt.

Q. What kind of a receipt do you mean when you say you gave him a receipt?

A. I gave him a warehouse receipt for the amount of wheat that he did not sell; what he wanted to sell I bought and paid the cash for, and the balance he kept my warehouse receipt for for nearly a year.

547 Q. Mr. E. T. T. Fisher testifies that he asked you if Mr. Foster did not owe you for property there to be taxed for taxable property, if he did not owe you, and that you said he did not, and that this conversation took place in the grand-jury room about 1881 or '2?

A. I went in to make an explanation respecting taxes, and I told them that there was parties who had agreed to pay the taxes on money that they were owing me. I don't recollect much about the conversation, but I told them who was to pay the taxes, and that I was to be released from it by the parties that was owing me.

Q. The grand jury had that under investigation, did they not, and claimed that you had not given in all that was owing to you on taxable property that year and the last?

A. Yes.

Q. Was F. M. Daniels present in the room as one of the grand jury?

A. I don't know. I don't know F. M. Daniels. He may have been.

Q. Do you remember whether your attention was called particularly as to whether Mr. Foster owed you at that time?

A. I could not say; I think I was, though; at least, if it was not alluded to, I think I mentioned it.

Here court took a recess until one o'clock.

Court convened at the hour appointed and the case proceeded, defendant and JOHN A. CRAWFORD still on the stand in direct examination.

Q. You may state whether you have operated the Magnolia mills much of the time since you have purchased the same; and, if not, why not.

(Objection by Weatherford as immaterial.)

A. I haven't operated it only a very little since I got it, and the reason I did not operate it was that I lost money every time I tried it, and rather than lose money on account of it I sold the wheat.

Q. You may state whether you have rented it at any time; and, if so, to whom.

548 (Objection by Weatherford, same as above.)

A. I rented it a short time to Isom, Lanning & Co.

Q. Did they operate it awhile?

A. They did.

Q. You may state whether you purchased that mill in good faith.

(Objection by Weatherford as immaterial and that it does not call for fact but conclusion.)

A. I bought it in good faith.

Q. You may state whether James H. Foster now owns or claims any interest in the property which he sold to you and your brother on the 6th of February, 1884.

A. He does not own any interest at all in the property that he sold.

Q. The complainant alleges that you hold it in secret trust for James H. Foster. You may state how that is.

(Objection by Weatherford as immaterial and that it calls for a conclusion and not for fact.)

A. It was a *boni fied* sale without any trust or anything of that nature in the trade. It was a *boni fied* sale.

Q. Was there any agreement or understanding between yourself and James H. Foster at the time of the sale or at any other time that you should hold the property you purchased of him on February 6th, 1884, or any part of it, for his benefit or use, or that he should ever at any time receive that property or any part of it back or that he should receive the proceeds of it in the whole or any part of the proceeds or any benefit from it whatever?

(Objection by Weatherford, same as above, and, further, that it asks for the witnesse's understanding of what the contract might be and not for the fact.)

549 A. There was no conditions in that sale nor anything was to be reserved, and no conditions in that sale that he should get any benifit or get anything back nor any talk about it; no conditions in the sale.

Q. Was there any understanding, implied or expressed, that Mr. Foster should receive any part of that property, directly or indirectly, back on any conditions whatever?

A. There was no conditions. He never asked for anything to be returned back—neither principal nor interest—under that contract; he was to receive no benifit nor anything of the kind. It was neither undetstood nor implied nor mentioned.

Q. Do you hold that property or any part of it in secret trust or any trust for Foster?

(Objection by Weatherford, same as above and as leading.)

A. I hold none of it in trust—secret nor any other way—for Foster.

(Here "Exhibit C" is shown to witness.)

Q. You may state whether or not you got George E. Chamberlain to write an affidavit for you in regard to taxes at any time?

A. I did.

Q. Do you recollect the year?

A. I don't recollect it, but I see here by the affidavit that it was in September, 1882. I suppose——

Q. Was it after the grand jury had been investigating your tax record or before?

(Objection by Weatherford as immaterial.)

A. I think it was after.

Q. You may state whether or not the subject of that investigation by the grand jury was talked over by you and Mr. Chamberlain at the time the affidavit was written?

A. I think it was.

Q. You may state whether or not the taxes that other par-
550 ties who owed you had agreed to pay was in that affidavit that you then made?

A. That is what I understood at the time.

Q. I want to know whether you intended to include the taxes that Foster and others agreed to pay for you on the amount they owed you or whether you intended to leave those taxes out of your assessment and let them pay them. If you have any recollection upon that subject please state.

(Objection by Weatherford that the affidavit itself is the best evidence as to what he intended upon that subject, and, further, that the witness has shown in this case that he did not know anything about this affidavit; that it is immaterial and irrelevant.

A. I have some recollection on that, and I did intend not to put them in, and I did not put them in.

Q. What advice did Mr. Chamberlain, as your attorney, give you upon that subject at that time, if you recollect?

(Objection by Weatherford, same as last above.)

A. He advised me to go to the court-house——

Q. I refer to putting that in.

A. I asked him if it was right for to keep that out. I had agreed with the parties to pay the taxes who had borrowed the money. He said it was not right to have the taxes paid twice; that it was right for to keep that out, and I had parties to go up to the records and to see if there was any of the parties who had put in their taxes, to see if they had put in them against me, and to fetch a list of the parties that had put in their assessment, and we could not observe any in that list that had put it in against me at that time of those that had promised to pay them.

Q. At the time the subject of your taxes was investigated
551 by the grand jury you may state what was claimed by the grand jury about your owning the Odd Fellows' Hall Association.

(Objection by Weatherford, same as above.)

A. It was claimed that the Odd Fellows' Association was owing me $5,000, and that I had not put that in for one of the items, and some others that they claimed I did not put in that I don't recollect.

Q. Who swore to that before the grand jury?

(Objection by Weatherford, same as above.)

A. John H. Burkhart put that in this indebtedness against me for the Odd Fellows' Association.

Q. Did he go before the grand jury?

(Same objection.)

A. I think he did.

Q. As a matter of fact did the Odd Fellows' Association owe you anything at that time or at any other time?

(Same objection.)

A. Neither at that time or at any time.

Q. Was John H. Burkhart the secretary of that association or company?

A. He was.

Q. Did he afterwards confess to you that he was mistaken?

(Same objection as above by Weatherford.)

A. He did.

Cross.

Cross-examination by WEATHERFORD:

Q. Mr. Crawford, when did you first have a settlement with Mr. Foster after you sold him the mill property known as the Magnolia mills?

A. I think the first time I had a settlement with him after that was in 1876 before he left to go on East to the Centen-ial Exhibition.

Q. Was that about the time that you purchased the Santiam ditch?

A. It was some time about that time.

552 Q. Did you loan Foster money to go to the centennial on?

(Objection by Flinn as immaterial, irrelevant, and incompetent.)

A. I did not.

Q. Did you loan him any money at that time?

(Objection by Flinn, same as above.)

A. I did not.

Q. How much did he owe you at that time?

A. Well, he owed me—I don't recollect the amount. I settled up with him and he gave me two notes—that is, rather, I would like to see them and then I could tell about what the amount was and when it was. There is three of them together.

Q. You did not let him have any money at that time?

A. No, sir. I think I got money from him at that time, if I recollect.

Q. How much money did you get from him at that time?

A. Well, I don't recollect now. Here is the time of the settle-

ment: April 28th, 1876, one note of $8,605; another note of $5,325. These two notes made the final settlement up to the time that I bought the mill, that he gave me, and the settlement of all that he was owing.

Q. That is the two notes marked "11 & 12," is it?

A. Yes; that is the two notes.

Q. That was the only amount that he was owing you at that time?

A. Yes; the full amount. There might have been something on the mill books that was not looked after. I could not tell whether there was or not.

Q. At that time was there anything owing on any other notes?

A. I could not say. The notes passed between us, and he gave me them, and I don't know whether there was anything paid
553 on my business or not, but this was a settlement between me and him.

Q. Did he at that time pay anything on the amount due to your brother?

A. I could not say whether he did or not, but if he did it would be endorsed on the notes.

Q. Do you remember how the $6,000 that was paid on the notes held by your brother was paid by Foster—whether in coin or otherwise?

A. I could not tell now whether it was coin or otherwise, but every time he paid on my brother's notes I endorsed them.

Q. All of the endorsements on the notes held by your brother were endorsed by you, were they not?

A. I think they were.

Q. Did he pay all that was endorsed on the notes about that time in cash?

A. I could not tell as to that, whether it was cash or not, but I marked everything that he paid on the notes—the amount he paid.

Q. How much money did he pay you at the time that you had the settlement and took the two notes marked 11 & 12 that you have just referred to a few minutes ago?

A. I could not tell now. He either paid me money or orders for all that he was owing me that is marked on them notes of that date.

Q. How long was he gone East?

A. I could not say.

Q. Did he buy the material for the water works while he was gone?

A. No, sir. I don't think there was any water works in contemplation at that time. I know there was not, for when the water works was started I was in California, and I saw an account where they had been applying to the city council for leave to put in water works in Albany, and my name was mentioned along with Mr. Wheeler and Mr. Foster, and that was the first thing that I knew of it, for I was in San Francisco at the time.

554 Q. When was it?

A. Well, it was in the 70*tie*'s some time; I can't tell.

Q. Was it as late as 1880?

A. I could not tell that.

Q. Did they purchase the material at that time?

A. They had not.

Q. How long did you stay in California?

A. Well, I staid for about six months; for over a year from the time that I sold out the mill I was in very poor health. I went in November and staid till spring some time.

Q. Did you authorize these men to use your name about the water works?

A. Well, I think there was something said. I think Mr. Flashner had applied, but at the time I saw the notice in the paper that they had applied to the city council for leave to erect water works and lay pipes in the streets——

Q. At the time that you saw the notice you were in San Francisco?

A. I think I was.

Q. Was that about the time that Flashner applied for some kind of a charter?

A. I think he applied to the legislature for some kind of a right; I could not say.

Q. What paper did you see that in?

(Objection by Flinn as immaterial and irrelevant).

A. I don't know whether it was the States Rights Democrat or the Oregonian.

Q. You remained in California how long after that?

A. I could not say how long. I came home in the latter part of June.

Q. The year following?

A. Yes; I could not tell how long afterward.

555 Q. What interest did Wheeler have in it?

A. Well, when I came home Wheeler said he would take a part of it and I agreed. I said I did not want it, and they insisted that I should go in, and I told them that I would take a part of it.

Q. Did Wheeler agree to go in?

A. We had agreed to buy the pipe, and I think that Wheeler said that he had no money to pay for his share of the pipe. That was about the time we were making the contract to buy the pipe. He said he thought he would withdraw, and he did, and never had anything in it.

Q. When did you have the next settlement with Mr. Foster after the one in 1876?

A. The next time was when I bought the property.

Q. You never had talked to him about it during all that time?

A. Oh, we had talked about it some, but never any settlement up to that time.

Q. When did he make the payment on these notes?

A. Well, it is marked on the back. I could not say without seeing it.

Q. Where were you when the payments were made?
A. I think I was in the office at the mill.
Q. Were the payments made in money or credits of some kind?
A. I don't know.
Q. Did you keep books?
A. I kept no books.
Q. Where did you keep those notes?
A. At home in my safe.
Q. At your house or at the mill?
A. At the house.
Q. Did you ever ask him for interest after you received the last payments endorsed on the back of this note marked "12"?
A. I expect I did.
Q. When?
A. I could not say.
Q. Do you know whether you did or not?
556 A. I may have, but I don't recollect distinctly whether I ever did or not.
Q. Do you know that you did not?
A. Well, I don't know. I asked him for money and he said he was short and I could not get any.
Q. When did you ask him for money and he said he was short?
A. Well, I could not say now. I never troubled him much for money.
Q. Do you know how long Foster remained East?
A. I do not.
Q. Do you know what time of year he went?
A. Yes; he went shortly after we settled up and he gave those notes. It was not more than a week or ten days before he was gone.
Q. Did he return to Oregon after the completion of the celebration?
A. I don't know when the completion of the celebration was. He returned late that summer or that fall.
Q. As late as October when he returned?
A. I can't say as to that.
Q. When did you first see him after he returned from the East?
A. Well, I saw him in Albany, but I could not tell what time of year.
Q. You had charge of the notes given to William Crawford, did you?
A. I had; they were in the safe in the house.
Q. Did you receive the payment made upon them?
A. I received all of the payments that was made on them.
Q. Who made the endorsements on them?
A. I did.
Q. Your brother William knew but very little about it, did he?
A. Well, he knew about it; but I always did the business.
Q. You have done all of the business yourself?
A. Yes, sir.
Q. You did transact the business at one time under the name of Crawford Brothers, did you not?

A. No, sir; I never did.

Q. But you have endorsed as Crawford Brothers, have you not?

A. I saw in the books of Foster's that it was kept in that
557 way. I never knew about that before.

Q. You had an account under Crawford Brothers, did you not?

A. Sometimes when I was gone my brother would go to the mill or order feed or flour or something like that, and it was kept in that way, but my brother and I kept separate accounts, and I did not know how Foster kept it on the books.

Q. You recognized that *that* account on the books as your account?

A. Well, I don't know why Foster kept it that way.

Q. You recognized that account as yours when you settled, did you?

A. Well, I thought it was correct, and I settled that way.

Q. When did you tell your brother that you had given up the notes that were secured by the mortgage and taken new notes—the old notes that was for the purchase of the mill?

A. I could not tell exactly, but he told me to get new notes, and that he would cancel the mortgage. I told him that it would be right for him to do that, and he told me to get new notes and release the mortgage, and he did so.

Q. Did you tell him that you were going to get new notes for it?

A. I did, and that if he did not wish to pay the taxes he would have to cancel the mortgage, and I took new notes, reducing the interest from ten to eight per cent., and the note for the accumulated interest was taken without interest.

Q. Mr. Foster had been paying the taxes on them before, had he not?

A. I suppose so; he promised to. They were at ten per cent. when he gave them and the regular interest had been twelve, and the interest came down to ten per cent., and brother told me to reduce the interest to eight per cent. and have him pay the taxes, and he did so.

Q. If Foster had been paying the taxes on it, why did you
558 want it changed and have him agree to pay the taxes on it still?

A. Well, my brother had been called on to pay the taxes. My brother was paying on the mortgage and Foster was paying on the notes, and he said that he did not want to pay on the mortgage.

Q. You say that Foster had been paying the taxes on it for a long time before. Is that correct?

A. I think that is correct, or at least he promised to do so; that was the arrangement.

Q. Then why did not you let it remain and let Foster continue to pay the taxes on it as he had been doing before without reducing the interest to eight per cent.?

A. Why, he would not have been entitled to it, for the interest was at ten per cent.

Q. Why would he not have been entitled to it?

A. Because he would have been paying the regular interest on it, and he would have been paying the taxes on the notes and my brother paying on the mortgage.

Q. Could not Foster have paid the taxes on the mortgage as he had been doing for a long number of years before?

(Objection by Flinn as not cross-examination, and, further, that it is immaterial what Foster or anybody else could do.)

A. I suppose he could.

Q. Then why did you at that time want to make the change and cancell the mortgage?

A. Well, my brother thought and I thought it would not be right for to be paying double taxes. He thought that Foster was paying on the notes and he would have to pay on the mortgage, and he said it would not be right to do so.

Q. Was that the only reason?

A. That was the only reason that I know.

559 Q. Was that the consideration for reducing the interest two per cent.?

A. That was the only consideration.

Q. That was the only consideration for reducing the interest, was it?

A. That was the only consideration.

Q. Was your brother present when you made your contract with Foster?

A. He was not.

Q. Where was it made?

A. It was made at the mill office.

Q. Who was present at that time?

A. I don't know that there was anybody present; there may have been. I could not say whether there was any one in the office or not.

Q. And you then agreed with him to cancell the mortgage and deliver it up, and the old notes, and take new ones at eight per cent. interest if he would pay the taxes, did you?

A. Yes; that was the bargain and agreement between him and I.

Q. It was also understood that you or your brother were not to give the notes in, was it?

A. Yes, sir.

Q. Did you discuss that with Mr. Foster?

A. I did.

Q. Was that all that you talked over at that time?

A. In regard to this transaction it was.

Q. Who figured up the interest to find out the size of the notes?

A. Foster and myself both.

Q. What was the consideration for knocking off the interest on the accrued interest?

A. Well, it was by direction from my brother for to charge him no interest on the accumulated interest, as he had been paying the taxes on it all of the time, and the interest was reduced to ten per cent.

Q. When did your brother tell you that?

A. Well, it was at the time that we were making the change.

560 Q. At the same time that you were talking to Foster?

A. No; a day or two before.

Q. How long before?

A. Well, at the time that I went to him about the notes and told him what my brother had agreed to take, and I fetched him the old notes and surrendered them up and he agreed to the new ones.

Q. Did he pay you any money at that time?

A. I think not.

Q. Did you let him have any more money at that time?

A. I did not that I recollect of.

Q. How did you come to loan him $3,000 in 1878?

A. He asked me for it or to go security on $3,000. He was building the building there and he was short of money and he wanted $3,000 and I gave it to him and took his note.

Q. When you were taking those two first notes dated April 28th, 1876, why did not you take it all in one note?

A. Well, I don't know what was the reason; we changed notes and it was requested that I should do so and I don't know what his reason was.

Q. Did he give any reason?

A. He may have, but I don't recollect. I think I surrendered three notes to him that amounted to them two.

Q. Did you have any reason why you wanted it in two notes?

A. I had no reason; I suppose that he had. He told me to write two notes and I wrote two.

Q. Did you have those notes when you talked with Mr. Goltra in 1883?

A. I expect they were in the safe. I never knew of them being out of it.

Q. Did you have those notes when you told Mr. Goltra that Foster did not owe you anything?

A. I don't know that I ever told Goltra that.

Q. Do you know whether you did or not?

A. I don't think I did.

561 Q. Do you know whether you did or not?

A. I don't think I did. I know that when parties asked about my private business I gave them an evasive answer.

Q. Do you know that you did not?

A. Well, I don't know. I don't think I did. I may have given him an evasive answer.

Q. When he asked you if Foster was owing you anything was that your private business or Foster's?

A. Well, it was mine.

Q. If he asked you that question it was very probable that you answered him, was it?

A. Well, I don't know; I have no recollection of whether he asked me that question or whether I answered it.

Q. Your recollection is not very good, is it?

A. Well, sometimes it is not the best, and sometimes it is better than others; but I have no recollection of that conversation.

Q. What subjects is your memory better on than others?

A. Well, when anything is impressed on it and I take an interest in it I can recollect that, and if it is immaterial and not of much consequence I don't try to remember it.

Q. Did you have a conversation at that time with Mr. Goltra?

A. I could not say.

Q. Did you ever have a conversation with him in reference to that matter of Foster's affairs?

A. Well, I could not say that I have; I may have; I don't recollect, but Goltra and I never had but very few conversations at any time since I knew him.

Q. And that was on business and to the point, was it not?

562 A. Well, if it was on business and to the point it was something I can't recollect. I have no recollection of any conversation with him concerning it.

Q. Did he not tell you that he was talking of storing wheat there and wanted to know how Mr. Foster stood?

A. Well, I can't recollect of any conversation with him.

Q. And is not that the way that the conversation came up?

A. It might have been; I don't recollect. I may have had the conversation, but I don't recollect of him enquiring into Foster's affairs.

Q. And is it not a fact that Mr. Goltra stored a good deal of wheat in the fall of 1883?

A. I paid no attention to Mr. Foster's business. I don't know anything about his storing wheat with him in 1883 or at any other time.

Q. If Mr. Goltra asked you as to Foster's financial standing in the summer of 1883, just before harvest, and told you it was for the purpose of ascertaining whether or not he should store his wheat with him, and wanted to know what his financial standing was, would not you have considered it business and told him, so far as you should have known his financial standing?

(Objection by Flinn as immaterial, irrelevant, and not cross-examination.)

A. I think I would have told him that it was good, for I stored wheat with him there myself, and if I had thought it was not good I would not have recommended him nor stored with him myself. So far as I knew, I thought it was good, but I did not know any more about it than anybody else, for I saw he was doing a good business and I heard no complaints, and I stored wheat with him myself.

563 Q. And if he had asked you in that conversation if Foster was owing you a considerable amount of money, would not you have told him that he was owing you?

A. I would not.

Q. And if you had told him anything, would not you have told the truth?

A. If I told him anything——

Q. I asked whether you would have told him the truth.

A. I don't recollect whether he ever asked me or not.

Q. I asked you if you had told him would not you have told him the truth.

(Objection by Flinn as immaterial, irrelevant, incompetent, and not cross-examination and as asking for a supposition on a supposed state of facts.)

A. Well, if I thought any person was asking me questions with regard to my private business, I should put them off as easy as I could and give him an evasive answer, for I never made a practice of telling my affairs.

Q. Then you think if Goltra asked you that question you gave him an evasive answer?

A. Well, I don't know whether I did or not.

Q. Well, would not you if he had asked you that question?

A. I have no recollection of him ever asking me that question.

Q. Did you consider that Foster was good when he was owing you and your brother together something like $40,000, and you had then endorsed for him for a large amount outside in the summer of 1883?

A. Yes; I considered Foster was good in 1883.

Q. Your claims against him at that time would amount to about $60,000 all together, would it not, with what you had endorsed?

A. Well, I think not in 1883. I had not endorsed much in 1883.

Q. You don't think this mill was worth much, did you?

A. I thought his mill was worth—that it was a valuable mill. I saw that he had put in a lot of very valuable machinery in 1883.

Q. How much did you think it was worth at that time, in 1883?

564 A. Well, I did not make a calculation of what it was worth, but I thought it was one of the best mills in the State at that time.

Q. Do you think it was worth as much as $25,000?

A. Yes; I thought it was worth more than that.

Q. $40,000?

A. I did not know what it was worth, but I knew it cost me a great deal more than $40,000 if the amounts that he had paid out from time he bought it had been all counted. He had expended a great deal of money on it, but I don't know what it was worth.

Q. It was a good mill in 1883, was it not?

A. He had spent a good deal of money on it, but I don't know what it was worth; it did not suit me.

Q. It had a good reputation?

A. It had a good reputation. After he made the improvements and put in the new machinery I looked around and I made the remark to Mr. Foster that he had better look out, for it might take a good deal more wheat to make a barrel of flour that it did before he put in the new machinery.

Q. When did you make that remark?

A. Well, it was in the fall of 1883.
Q. Before Frank Parton left?
A. It was after Parton left, but the mill had not been started up when Parton left.
Q. Was that before the harvest of 1883 that he left?
A. I think it was before any wheat came in; the mill was not nearly completed when Parton left.
Q. How much inspection did you make of the mill at that time—the time that you refer to?
A. I just went through and looked around to see the alterations they were making and the new machinery, and I went around
565 afterward to see how the new machines was working and it did not suit my idea of a mill. I thought it was a waste of flour.
Q. And you called Foster's attention to it?
A. I did.
Q. What did he say?
A. I think he said that he would have a test made of it.
Q. That was in the fall?
A. Yes, sir.
Q. Did he have a test made of it right away?
A. I don't know whether he had a test made of it or not.
Q. Where were you when you purchased the mill?
A. I was in the mill office.
Q. When?
A. The time I purchased it.
Q. The date of it?
A. Well, I think the final conclusion was on February sixth, at the time it was finally bargained.
Q. When did you first speak to Foster about it?
A. Well, I spoke to him two or three days prior to that.
Q. Are you certain as to that?
A. Well, some time between the first and the sixth.
Q. It might have been as early as the first?
A. No; I don't think it was as early as the first—between that and the sixth.
Q. What did you say to him?
A. Oh, I can't say. I told him that I had understood that he was trying to borrow money and that he was owing me and my brother and I wanted security for it.
Q. From whom did you first learn that he was trying to borrow money?
A. I think John McCraken.
Q. Were you in Portland when he told you?
A. I think I was here.
Q. When was that?
A. Well, it was before February.
Q. Are you sure of that?
A. Yes, sir.
566 Q. How long before?
A. Not many days.

Q. Give the number.
A. I could not give the number.
Q. What business had you in Portland at that time?

(Objection by Flinn as immaterial, irrelevant, incompetent, and not cross-examination.)

A. I don't recollect what the business was; I always have business when I come down—something at that time.
Q. Did you come down the day that Mr. McCraken told you that he was trying to borrow money?
A. I don't recollect whether it was that day or not, but as soon as he told me I turned and went home.
Q. Did he tell you the amount that Foster was trying to borrow? Was that the first time that you had heard that Foster was trying to borrow money?
A. That was the first time.
Q. Had not he often borrowed money before?
A. Yes; but I had endorsed for him.
Q. And you, when you heard he was wanting to borrow money, you turned and went home?
A. Yes, sir.
Q. Where were you, what particular part of Portland, when McCraken told you that Foster was wanting to borrow money?
A. Well, I could not say whether at his office or on the street; likely at his office, but I don't remember now.
Q. As soon as you returned home, did you call on Mr. Foster about securing you?
A. Pretty soon after I came home.
Q. The next day or the same day?
A. I don't think it was the same day; I generally came home in the evening and may have went to Lebanon from here; I did once; I had men working on the dam at Lebanon, on the Santiam
567 dam, and I may have gone up to see them on that trip.
Q. When you were here (Portland) at that time did you stop at a hotel?
A. I think I did.
Q. What hotel did you stop at?
A. I could not say; there was the Holton house, the Esmond, and the St. Charles, and at one of them hotels I always stopped at.
Q. And when you stopped at one of those hotels you always registered?
A. If I staid all night I registered.
Q. What did you say to Foster?
A. I told him that I heard he was trying to borrow money.
Q. Where was he when you told him that?
A. I could not say; I think he was in his office.
Q. What did you tell him?
A. I told him that I wanted security, and that I did not think I had any money to loan him.
Q. Why were you unwilling to loan him some money at that time if you considered him good?

A. Well, I had no security for what he had got.

Q. Did you not voluntarily release him from the security you had a short time before that?

A. Well, released him from my brother's.

Q. Well, you voluntarily released him from that, did you not?

A. I think I had my brother do it.

Q. Under your advice?

A. No; I think he did it himself.

Q. And you were not willing to loan him any more money?

A. No; I was not willing to loan him any more without security.

Q. Was he not willing to give you security if you would loan him money?

A. Yes.

568 Q. Why did not you do that?

A. He would not give me security unless I would give him money enough to relieve him from the short wheat gone from the warehouse that the farmers had his receipts for.

Q. All this occurred between you and him during that first conversation, did it—the main part of it?

A. I think it did.

Q. How long after that was it that you had another conversation?

A. Well, about the next day afterward.

Q. Where did it occur?

A. Well, in the same place.

Q. Did you go to his place of business?

A. Yes.

Q. Well, just go on and relate what you said to him and what he said to you.

A. Well, he said he would give security on his property, but he would rather sell it than to give security; and I said that I would rather have security and not buy. We talked the matter over and he insisted on selling, and I refused to buy; and I went and consulted my brother to see what he would say about it. He said he did not know what to advise me; I might do the best I could. If I could not get security I might buy if I thought proper.

Q. Have you told all that occurred between you and Foster at that conversation?

A. Well, I could not recollect all that was said. I am only telling you the outlines—the substance of it.

Q. When was the third conversation?

A. Well, it might have been the next day. I don't recollect.

Q. Where did that occur, and when?

A. Well, I can't recollect when it was; but it was at his office that all of the conversations took place.

Q. Well, what was said?

569 A. Well, he said that he wanted to be relieved from this short wheat. It seemed to be a struggle on his mind. I recollect that; and he wanted me to buy. He said if he gave a mortgage it would be sold, and he would have to quit business, and I would get the property anyhow, and it would only prolong the time, and he would rather sell.

Q. What was the amount to be incerted in the mortgage or was that agreed upon?

A. It was not agreed upon as we did not know then what it would be.

Q. When did you have the fourth conversation with Foster?

A. Well, some time afterward, when I concluded to buy the property.

Q. How long after?

A. Well, I could not tell; it was not a long time.

Q. The date?

A. I could not say.

Q. Two days?

A. When I concluded to buy the property I told him to make a statement of all of the property he had for sale and put his lowest price on it, and let me know the value and kind of property he had for sale.

Q. I was asking you for the time, not what he said.

A. Well, I can't tell the time.

Q. How long was it before the deeds were made out that this fourth conversation occurred?

A. I could not tell how many hours or days it was; but only a short time—two or three days. I can't recollect the day of the month or the hour of the day, or give a direct answer as to the time.

Q. Well, when did you have the fifth conversation?

A. I don't know. I did not keep the number of conversations—whether four or five or six. We had several conversations.
570 I don't recollect what took place in each of them. It was two or three days from the time we first talked on the subject of giving security.

Q. What day did you take down your notes and accounts to ascertain what amount he owed you and in which conversation did it occur?

A. I figured on them notes at home and took down the list of the amount of all he was oweing my brother and I and then he said that there was about 20,000 bushels of wheat short and he thought that about $10,000 would about cover that short wheat, and I, over and above what he was oweing my brother and I, was to release him from responsibility for that wheat. He did not think it was over 20,000 bushels of wheat, but he did not know the amount that parties held.

Q. When did you first go to Judge Strahan to see him about it?

A. Well, I could not tell. I went to my brother first and went to Strahan afterwards and he said for me to buy the property or take security.

Q. Where was Strahan when you first saw him on this business?

A. I don't recollect where he was.

Q. Did you go to his house?

A. I think I did.

Q. What time of night did you go to his house the first time?

A. Oh, it was not night at all.

Q. What time of day?
A. I don't recollect now.
Q. At the time you went to Strahan's had you and Foster agreed or figured up the amount of property that he had to sell?
A. We had not.
Q. Did you go to see Strahan again before you made the purchase?

571 A. No—that is, I did not go to Strahan at all until after I knew the price of the property—what he held it at—and concluded to take his proposition, then I went to see him about making out the deeds.

Q. What time did you go to see him about that?
A. Well, it was along in the evening—some time after dinner, I think.
Q. Who went with you?
A. I don't think—I think Foster went with me.
Q. Did you go to his house that time?
A. Yes.
Q. How long did you stay at his house at that time?
A. Well, I did not stay long. He said he could make out the deeds, but he did not feel like going to his office.
Q. I did not ask you what he said. How long did you stay?
A. Well, it was not long.
Q. Who carred the books—Foster's books—up there at that time?
A. The books was not carried up.
Q. Did not you have the books up there at that time?
A. No, sir; no books.
Q. Did not you carry some books and did not Robert Foster carry up some books?
A. No, sir.
Q. Were they not carried up the night before?
A. I have no recollection of being there the night before the deeds were made out.
Q. Is your memory very defective about the night before?
A. I don't think it is.
Q. Is it not one of the immaterial points that you did not try to remember?
A. Well, I know now for certain that I was not there the night before the deeds were made out.

572 Q. Well, were you not there two nights before?
A. I was not.

Q. Were not Foster's books there to make the statement from?
A. I never saw Foster's books there.
Q. And you are positive on that point?
A. Yes, sir; I am.
Q. If they had been there you would have known it, would you not?
A. Well, I suppose I would.
Q. You and Foster went together once, did you not?
A. Well, I suppose we did.
Q. What time were you there the next time, the second time?

A. Well, it was after dark; after supper.
Q. How long after supper?
A. Oh, just immediately after.
Q. What hour?
A. I could not say.
Q. As late as nine o'clock?
A. Oh, not as late as that.
Q. How much before?
A. I could not say.
Q. Was it five o'clock?
A. Well, it might have been five o'clock, or between five and six; I could not say.
Q. Between five and six you and Foster went there the second time?
A. Well, I don't recollect; I could not give the hour. The days were short then, and night came on pretty soon, and I never thought to look.
Q. Who else was there at that time?
A. I think—no, I did not see Mrs. Foster at that time; it was afterwards. Robert and, I think, James Foster—one of them—came and told me that they were there, and wanted me to come over.
Q. Which one came after you?
A. I could not say now.
Q. What time was it that he came for you?
A. I think it was after supper.
Q. Was that the time that you have been talking about that he came after you?
A. Well, he only came once after me.
573 Q. Was that the time the deeds were made out?
A. Yes.
Q. So you did not go there but once with James H. Foster?
A. No, sir.
Q. So you went there three times—twice with Mr. Foster and once with one of the boys?
A. I went once with Foster, and the second time, when Strahan was alone; and then I went once with Foster, and then they sent for me the third time to come over.
Q. What did you do at Strahan's that night, you and Foster?
A. Well, we went and explained to Strahan the nature of the property, the price of it, etc.
Q. Well, what was the etc.?
A. The etc. was the price of each piece of property, the price that I was to pay for it.
Q. Was that all that you did?
A. That was all that I did.
Q. And all that Foster did?
A. No; I think Foster did something else.
Q. Well, why don't you tell it?
A. Well, he signed the deeds for it that Strahan had ready for him.

Q. How many deeds did he sign?

A. I could not tell without enumerating them up. There was one for the mill, one for his brick block, one for his dwelling-house, and one for the little house down by the mill.

Q. Were they all made separate?

A. All made separate.

Q. Four deeds?

A. Yes; four deeds.

Q. Well, was that all he did?

A. No; there was some other papers that he signed.

Q. Well, what were they?

A. They were for other property that I got. I don't know
574 whether deeds or what they were now, but it was for the water works and for the books and the sacks.

Q. Did he sign a paper for each of those three articles?

A. I think there was a paper for each of those articles.

Q. Did you get them?

A. I think I got them.

Q. Where are they now?

A. I can't say now; I think in my safe. I took them all to the court-house, but whether I ever got them again I can't say.

Q. Have you ever seen them since that time?

A. I could not say whether I have or not.

Q. Were they deeds?

A. Whether deeds or contracts I don't know. They were papers showing the price and the property for which they were made.

Q. Have you ever looked at them since that date?

A. I can't say.

Q. You don't know where they are now?

A. I could not say; they may be at the office. I don't know whether I ever took them to the house or not.

Q. What office?

A. The mill office.

Q. You did not put them with the other papers?

A. I don't know; what papers?

Q. The notes.

A. I had no notes.

Q. Were they in the safe at the office at the mill for awhile?

A. I don't know where Foster kept them.

Q. Well, have you repeated all that you did there that night?

A. Well, the most of it. There was, I think, an agreement between Foster and myself for him to assist me in the office and the mill, for I did not understand the business.

Q. Where is that agreement?

A. I don't know.

575 Q. Who has got it?

A. I had it at one time, but I think I gave it up at the trial up in Linn county.

Q. Who did you give it to?

A. I could not say.

Q. Have you ever seen it since?

A. I may have; I don't know.
Q. Who signed that?
A. I think I did.
Q. Did any one else?
A. I could not say.
Q. Did you stipulate the price that you were to pay him?
A. I could not say as to that, either.
Q. Did you talk with Foster before you went up to Strahan's?
A. I did not.
Q. You talked that over there?
A. We talked that over there.
Q. Wrote the contract; did you state the amount?
A. I could not say whether the amount was stated or not.
Q. What was the amount? Was it the understanding between Foster and yourself that it was not to be over a hundred dollars a month?
A. Well, it was not to be over $75.00. That was the understanding between Foster and I. I had been a number of years out of the business, and the mill and machinery was all new to me and I did not understand it, nor the business of the mill and the books, and I thought it would be impossible for me to do it alone, and so I had Foster to assist me.
Q. I did not ask you anything about what it was for; I asked what you were to give him.
A. I think it was $75.00 a month.
Q. Are you sure of that?
A. Well, I think I am; pretty sure.
Q. Well, what else did he do there that night?
576 A. Well, I don't recollect. Oh, yes; there was a note or some kind of obligation that Foster made me give him that I would be certain to perform that part of the contract relating to the short wheat.
Q. A note?
A. A note or something to that effect to the amount of $10,000.
Q. The consideration of that note was $10,000, was it?
A. I think it was $10,000.
Q. That was for the purchase of the wheat, was it?
A. That was to secure Foster from any responsibility for any of that short wheat. That appeared to be his principal object, was for to have that short wheat bought and paid for, or wheat bought in the place of it, and to collect in his receipts.
Q. Did you know that night how much short wheat there was?
A. Well, I knew Foster said he had leveled off his bins, and, as near as he could estimate, there was about 32,000 bushels, and he thought as near as he could make out there was 20,000 bushels short.
Q. And you signed a note to secure that?
A. I think it was something like that note.
Q. Don't you know it was a note?
A. It was something like a note.
Q. Did you read it?
A. No; I did not read it.

Q. You know a note when you hear it read, don't you?

A. I know a note. I don't know the conditions of a note. The note was to be deposited with a certain person and held against me until Foster was relieved of all responsibility for that short wheat, and then it was to be returned to me whenever Foster was satisfied that he was relieved from that short wheat.

Q. Who was to hold it?

A. Dr. Gray.

Q. Wheat was worth more than fifty cents a bushel, was it not?

A. Yes; it was.

577 Q. What was the reason that you did not give a note for enough to secure that wheat?

A. Well, the reason was that some parties had drawn some money on their wheat and some had got flour, and we did not know how much was owing on it.

Q. As a matter of fact, then, Foster was not short for that amount?

A. There was that amount of wheat receipts that was out and he did not know how much was due on them, and he said he thought $10,000 would pay for the short wheat, but he did not know, wheat was not more than fifty or sixty cents then.

Q. Did you know how much the counter-claims were that were due then?

A. I did not.

Q. Ever figured them up?

A. No, sir.

Q. You never made any estimates?

A. No, sir.

Q. And you never had it done?

A. No, sir.

Q. Never saw an estimate?

A. I never saw it, but I employed him for to settle up with the farmers and find out how much wheat was left.

Q. How much did you pay?

A. Well, I paid about $10,000 or more.

Q. How much more?

A. I could not say how much; not much, though, I think.

Q. Three thousand dollars more?

A. Oh, no; not that much. I could not tell, though it would not amount to one thousand, I think.

Q. When did you next see that note?

A. When Foster handed it to me. I went after him for to get that note when I had bought all of the warehouse receipts that was out against him, or give my own for them.

Q. Well, when was that—as late as 1886?

A. I could not say.

578 Q. Give the time.

A. I could not give the time.

Q. Some time between the time of the purchase and 1886, was it?

A. Yes.

Q. Where did you see it?

A. I saw it in Foster's hands when he gave it to me.

Q. Where were you at that time?
A. In the office.
Q. What did he say at that time?
A. He said, "Here is that obligation."
Q. You don't remember what else he said?
A. I know he said that; and he handed it to me.
Q. What time was that?
A. I don't remember.
Q. Was it as early as June, 1884, that he handed it to you?
A. I could not say when it was; I could not name any month or day of the month or even the year.
Q. You can't give the year?
A. No; I don't recollect.
Q. Are you certain that he ever handed it to you?
A. I am.
Q. And you are certain that it was the mill office?
A. Yes; I am certain that it was in the mill office. I am certain I got it and put it away.
Q. Where did you put it?
A. I think I put it in a little pocket-book that I had in my pocket and then I put it in my safe afterward.
Q. What safe?
A. At home.
Q. Did you put it with the contract made with Foster when you bought it?
A. I could not say what I did do with it. I have lost it. There was several other papers there as well as that.
Q. Do you know who held that $10,000 note during the time it was out of your hands?
A. I think I answered that.
579 Q. No; you did not.
A. Did not I tell you that it was Dr. Gray was to hold it?
Q. Well, do you know that he did hold it?
A. Well, Dr. Gray told me that he had it.
Q. When did he tell you?
A. I think it was some time after he got it. I asked him if he had it and he said he had.
Q. Do you remember when that was; what year?
A. Well, it was some time after the wheat receipts stopped coming in, and I thought I had them all bought or receipted for and arranged between Foster and the farmers.
Q. Did he say he had delivered it up?
A. He did not say, nor I did not ask him.
Q. That was all he said about it?
A. That is all; he said he had it.
Q. What time in the morning after Foster made the deeds did you go down to the mill office?
A. Well, I went down after breakfast; some time in the morning. I don't know what the hour was.
Q. Was J. H. Foster there at that time?
A. I don't think he was.

Q. You got there before he did?
A. I think I did.
Q. He came down there and assumed his place under your power of attorney and went to work, did he?
A. I think he did.
Q. About the usual time?
A. I think so.
Q. Went to his desk as usual?
A. I think so.
Q. Took charge of things about as a man would that had charge of things as general superintendent, did not he?
A. Yes.
Q. Looked after your business?

A. Yes; I know that during the day some time there was a
580 big crowd of people came down there for information, and they was all wanting to sell wheat or to get receipts from me in place of the ones that they held of Foster's.

Q. Did Foster turn off any hands that day?
A. I don't know; the first man that I met was Mr. Beam, and I asked him if he would work for me; he said that he would, for Foster had discharged him or told him that he had no more work for him.
Q. Was that all that was said between you and Beam at that time?
A. No; there was quite a conversation; I don't recollect; I asked him if he would work for me and he said he would, that he had been discharged by Foster; I told him that I wanted somebody for to look after the mill.
Q. I thought you hired Foster to do that.
A. No; I hired Foster to stay in the office and assist me in the mill and in the office, settling up with the farmers and learn me a knowledge of how to work the mill, and to have him to settle up with the farmers that held receipts, and to settle accounts there in the mill.
Q. You kept all of the same hands that Foster had had, did not you?
A. No; I did not keep them all.
Q. What ones did you have?
A. I don't know what ones he had; he turned them off and I only engaged Beam and Gray at that time.
Q. Foster and Gray?
A. Yes, and Beam—three.
Q. Gray is a brother-in-law of Foster's, is he not?
A. I don't know; I heard so.
Q. Foster has been in there ever since, has he?

A. Occasionally he has been in there ever since.
581 Q. And you have been paying him ever since?
A. I have.

Q. How much a month?
A. Well, about $75.00.
Q. I did not ask you about how much.
A. Well, I could not tell how much he did receive.

Q. Do the books show? Are they here?

A. I think not.

Q. None of them?

A. Well, there is a great many of them here; I brought all of Foster's books, but whether there is any of them books in here or not I could not say; there are a great many that are not here, and I don't know; I never looked at what is here.

Q. Did you immediately open new set of books, or continue with Foster's old books, or opened a new set of books?

A. I don't know whether they did or not; there was some of Foster's books that I made memorandum in for the business that was settled; whether there are any here, I don't know.

Q. Did you make a note of just the amounts that were paid to Foster at the time?

A. I did not.

Q. Did you ever make a note of it on your books?

A. I never did.

Q. On what books did you ever keep an account of Foster's salary?

A. Well, I could not tell the number or description of it.

Q. Was it the mill books?

A. Well, it was books in the office that I bought from Foster.

Q. It was in books that you bought from Foster?

A. I think it was.

Q. Those that had the accounts in relation to the mill and warehouse?

A. Well, I don't know.

Q. You have seen the account, have you?

A. I have seen the account.

Q. Did you know what the books referred to about the business?

A. Well, they referred to the business of the mill and the parties that were working in the mill for me.

582 Q. Then did you have books in reference to the water works?

(Objection by Flinn as immaterial, irrelevant, and not cross-examination.)

A. Foster had books in reference to the water works, but I had none, and I had those books from him, I suppose, along with the balance of the books that were turned over to me.

Q. Did you keep Foster's account in the water-works books or in the books referred to about the mill?

(Objection by Flinn, same as above.)

A. I could not say what set of books it was kept in. Mr. Gray kept the books after I got them from Foster.

Q. Did you know the difference between the two sets of books?

(Objection by Flinn, same as above.)

A. I do not.

Q. Can you tell one from the other?

A. No, sir.
Q. Are they alike in size and appearance?

(Same objection by Flinn.)

A. There are different sizes of books in the office, and I would not know them by looking at the size of them in which Foster's account was kept.
Q. When you looked at Foster's account how much had been paid him?

(Objection by Flinn, same as above.)

A. I could not tell the amount that was paid him.
Q. Had any been paid or been charged to him in cash?

(Same objection as above by Flinn.)

A. I think it had.
Q. A large amount?

(Same objection by Flinn.)

A. I think it did not amount to more than $75.00 a month.
583 I asked Gray one time if Foster had ever had more than $75.00 a month, and he said he had not.
Q. When did you ask him that?

(Same objection by Flinn.)

A. I could not say.
Q. Eighteen months ago?

(Same objection by Flinn.)

A. Well, I don't know when it was.
Q. After the suit had been commenced by Mr. Goltra, in Linn county, against you and Mr. Foster?

(Same objection by Flinn.)

A. I could not say whether before or afterward. I had asked him more than once, and he had always said that he had not ever drawn more than $75.00 a month.
Q. How many times did you ever ask him that?
A. I don't know how many.
Q. He has been in your employ ever since, has he?
A. Yes.
Q. Did you deduct any money out of his salary to pay on the claims that you had paid out for him?
A. I did not.
Q. Did you deduce anything to pay house rent?
A. I did not.
Q. Did you deduct anything for flour that he got from the mill?
A. I did not.
Q. He had got flour there, haden't he?
A. I suppose he had.
Q. Was it charged to him on the books?
A. I suppose so.

Q. And you never deducted any for that?
A. I never did.
Q. Nor had it done?
A. No; nor had it done. His account, I suppose, is there. Everything that went out of the mill was put down on the book, and I don't know how much he got.
584 Q. How much did you pay for him on the outside claims that you have named?
A. I paid one claim to Mr. Pipes, his former miller.
Q. How much was that?
A. I could not tell the amount; it was somewhere about $400.
Q. Did you pay any one else?
A. I don't think of any one else. I was security to Judge Flinn for some amount and I could not tell the amount.
Q. When did you give that security?
A. I could not tell when it was; some time after.
Q. How much?
A. I could not tell.
Q. What was the date of it?
A. I could not tell.
Q. Have you ever seen it?
A. Yes; Judge Flinn showed it to me.
Q. Then you were wrong when you testified before Judge Boise in the circuit court in Linn county in the case of W. H. Goltra against Foster and yourself that you had paid Judge Flinn a lot of money?

(Objection by Flinn, because it is a supposed fact, which is not true, that the witness never testified to any such thing.)

A. Well, I have no recollection of testifying to that effect.
Q. Did not you testify before James Elkins, a referee in the case wherein John Baltimore was plaintiff and J. H. Foster was defendant, that you had paid Judge Flinn some money that was owing by J. H. Foster to him at the time you purchased the property and paid for it or had the deeds made out on the sixth of February, 1884?

(Objection by Flinn—first, because the evidence that Mr. Crawford gave was reduced to writing, and the writing is the best evidence of what it contained, and the writing is in the possession of the counsel or under his control, and to ask that question he should first produce it and show it to witness before he is re-
585 quired to answer.)

(By WEATHERFORD:) As to the last statement of Counsel Flinn, I will say that I have not the evidence in my possession at the present time, but presume it is in the clerk's office or Mr. Wolverton's office, in Albany.

A. There was some conversation in taking that evidence in the Baltimore case about Judge Flinn's note endorsed by me. I had no recollection at that time nor did I know anything about that note. I asked Judge Flinn—I think he was present at that time—if there

was such a note, and he said that there was and I had endorsed it, but I had no recollection of it, and some time afterwards I was at Judge Flinn's office and he showed me the note, with my signature as security on it, and I have not seen it since.

Q. Now, will you please answer my question? Did you or did you not swear that you had paid Judge Flinn the money owing to him by J. H. Foster?

(Objection by Flinn, same as above.)

A. I could not tell whether I did or not.

Q. And did not you also give the amount and the date when you paid Judge Flinn?

(Same objection by Flinn.)

A. I don't think—if I had paid Judge Flinn, I think he would have produced the note. When I asked Judge Flinn he produced it, and I have not seen it since.

Q. And did you not testify to the same purport before Judge Boise in the trial of the case, wherein W. H. Goltra was plaintiff and J. H. Foster and yourself were defendants, in Linn county, that you had paid Judge Flinn the amount of money that was owing or due from J. H. Foster to him; give the two claims of Flinn and James Pipes as two of the claims that you had
586 paid other than those you had enumerated in the contract of sale as alleged by you made that night at Judge Strahan's house?

(Objection by Flinn, same as above.)

A. I don't think that I did enumerate them claims in the purchase price of the property, for the reason that I know that I had not endorsed Foster's note to Pipes till after the sale of the property, and the further reason that he held the key to the mill and told me he would not give it up until Foster paid him his salary or his wages for the time that he had worked for him; that he would keep the key till he got his pay.

Q. Was that the reason that you swore to it?

(Same objection as above by Flinn.)

A. I don't know of any reason that effects this case.

Q. I asked you if you did not swear to a certain proposition. Why don't you answer the question?

(Same objection by Flinn.)

A. I could not say what the proposition was, but I know that it was after the sale of the property that I endorsed that note for Foster, and the reason for doing so was to get the key of the mill, as I did not wish to have other parties to have a key to my property that was not at work there.

Q. I asked you if you did not swear that you paid two persons' claims—Judge Flinn's and Jim Pipes'—in addition to the others that you said you had agreed to pay at the time the deeds were made?

(Objection by Flinn as immaterial, irrelevant, incompetent, and not cross-examination.)

A. I have no recollection of what my testimony was in that
587 respect, but I found out from Judge Flinn that he held a note endorsed by me for Foster, and I considered that I was responsible to him for it, but I have never paid it nor lifted that note yet, nor even seen it. I had forgot all about it, and I asked him if it was so, and he said yes it was, and showed it to me, and I saw my name on it and saw that he held me responsible for it. As to what testimony I gave in, that I don't recollect, but as to them two notes I know that one of them I know I have paid, and the other I have not; but I always held myself responsible to Judge Flinn for the amount, *whether* it may be, if Foster don't lift it, and I don't know whether he has or not.

Q. Did you keep back any from Foster's salary to pay Flinn with?

A. No; I did not keep any back for that purpose.

Q. You paid him right along?

A. Paid him right along—every month some; I don't know how much.

Q. Did you take his receipt?

A. I did not.

Q. Did you pay any money to him?

A. I gave him some money and gave orders to Gray to pay him money when I was not there.

Q. Did not he sometimes go and get the money himself?

A. No, sir; not that I know of; no chance to get any only either through Gray or myself, for he never handled any.

Q. You kept Foster there because of his knowledge and experience?

A. I kept him there to attend to business, for I thought he was the most suitable man I could get to attend to that business and to give instructions how to get along.

Q. He had been successful in his own business for a number of years there, had he?

A. I presume he had.

588 Q. And made money?

A. He has told me so. I have no means of knowing.

Q. He understood the books, too, did he?

A. I could not say what he understood.

Q. And you kept him there during the time you had the mill leased, did you?

A. Yes.

Q. How long did you have the mill leased?

A. Oh, it was only for a short time.

Q. How long a time?

A. Oh, I could not tell; it might have been two or three weeks; I could not tell the exact time.

Q. What year?

A. I think it was—it might have been in 1884 or '5.

Q. Spring, summer, or fall?

A. I could not tell that; it was some time; it was in the summer or spring; I could not tell which now. I think it must have been in 1885.

Q. Did you keep Mr. Beam at work about the mill at that time?

A. Yes.

Q. What did they do with it—Isom Lang & Co.?

A. They started the mill to running and made flour. They furnished the miller and everything required to run the mill and furnished their own sacks. They furnished everything and I only furnished the mill.

Q. Isom Lanning & Co. own a mill in Albany, do they not?

A. Yes.

Q. Have you been running the mill since that?

A. Yes; I have run the mill since.

Q. How much has Foster paid on the house?

(Objection by Flinn as irrelevant and immaterial, and no issue on that, and it is not cross-examination.)

A. I don't know whether he has ever paid any at all or not.

589 Q. Did he ever pay any to you?

A. He did not.

Q. How many original projectors were there in that Santiam canal in addition to Foster?

A. I could not say how many there was.

Q. Fifty?

A. I don't know.

Q. Quite a number, was there not?

A. I believe there was quite a number. I knew a few of them.

Q. Was Foster ever superintendent of it?

A. I could not say.

Q. You have had charge of it for a number of years yourself, haven't you?

A. I have had charge of it since the time I bought it to the present time. I think I have had it something like ten years.

Q. During that time has Foster been superintendent of it?

A. Sometimes he was; Jason Wheeler was the principal superintendent; him and Foster would consult how to do things, but Wheeler was the manager and superintendent as long as he was in Albany.

Q. When did Wheeler leave Albany?

A. Well, I could not tell when he did now.

Q. Who collects the rents you receive from that water, the canal?

A. Judge Flinn and Chamberlain; it used to be Howell & Flinn, and Flinn has had the management and collecting ever since.

Q. Who makes the contracts?

A. The contracts were all made before I bought them out.

Q. They have been running from that time to this?

A. Yes; I think I did, perhaps, make one or two after I bought it.

Q. Mr. Crandell does all the work of repairing that mill, does he not?

(Objection by Flinn as immaterial, irrelevant, and not cross-examination).

A. He does not do all the work.

590 Q. Who does superintend that part of it?

(Same objection by Flinn.)

A. Sometimes Foster, sometimes myself, and sometimes Crandell.

Q. Does Foster go much along the canal—along the line of it?

(Objection by Flinn, same as above.)

A. Yes.

Q. When does he?

A. Well, I don't know when he does; whenever I send him.

Q. When do you send him?

(Same objection by Flinn.)

A. The last time I sent him I went with him and took a man—a mechanic—along to see about repairing the flume that reached across a gulch and the bench was washing away, and I sent them down to see how it could be fixed, and finally I went down myself along with them and gave orders to Crandell about having it fixed.

Q. Where did he go to at that time?

A. He went to where the flume had fallen in, across the gully at the lower part of the canal below the railroad bridge.

Q. In Albany?

A. Yes.

Q. Do you remember any other time that he went along the canal?

(Objection by Flinn, same as above.)

A. Yes; he went out several times.

Q. When?

A. I could not tell when. He went out whenever there was repairs needed to be made; him and I would go out along the line to see what was needed.

Q. As often as ten times in the last three years?

Q. Yes.

Q. Can you name one time?

(Same objection as above by Flinn.)

A. I can give you no dates, for I can't remember, nor I did not try to. I would find that the water would fail to come into town,

591 or would be notified by the parties using it, and I would hitch up my buggy and get him in to go and see where it was, and when I found where the *brake* was see how it was to be fixed and then go to work and have it fixed.

Q. Is he a civil engineer?

A. I don't know whether he is a civil engineer or not; he appears to be civil; how much of an engineer he is I don't know. He is

familiar with the ditch. I don't know how much of an engineer he is, but his judgment of how to fix things I consider good.

Q. Why would not his wife sign the deed to the house by the mill?

A. I don't know why she would not, but she did not.

Q. Did you ask her to?

A. I did not.

Q. Who did you offer to sell that house and grounds to where Mr. Foster lives?

A. I don't know that I offered it to any one. I said it was for sale. If any one is wanting to buy I would like to enter into a contract to sell it.

Q. Who did you tell that the property was for sale?

A. Well, I don't recollect now. I told several that I had property for sale, and I would sell either that or any other property that I have in Albany.

Q. It was for sale just like any other property you have there in Albany?

A. Yes.

Q. You made no special effort to sell it?

A. I made no special effort to sell it, but I would have sold it to any one at any time that I had a customer to buy it.

Q. Foster deceived you when he deeded you that brick block, did he?

A. I don't know whether he deceived me or not. I thought that I had four stores, but when I examined the deeds I found that there was one short and there was only three.

592 Q. Did you count the sacks that you got of Foster?

A. I did not.

Q. Did you ever count them?

A. I never did.

Q. You don't know whether you got cheated in that part of the contract or not, then?

A. I thought I got pretty badly fooled on that. They were old sacks; of no use. The mice got into them and there was not many that was of any account.

Q. Did the mice get in before or after you bought them?

A. I don't know about that; they was in when I overhauled them.

Q. When did you overhaul them?

A. Well, when the farmers came in to get sacks for hauling wheat to the mill.

Q. Just before the harvest of 1884?

A. Yes.

Q. You never looked at them before that?

A. No; it would have done no good to have looked at them. They were valueless.

Q. Did you make any estimate of the claims you had on the books against Mr. Foster?

A. Yes.

Q. When did you do that?

A. Well, before we made the contract.

Q. Did you make an abstract of it?
A. Well, I took the amount that was footed up of the accounts.
Q. On each account?
A. No; I took the account from the ledger.
Q. Each man's account separate?
A. No; I just looked at my own account. What accounts, my own that he was owing me?
Q. No, sir; I asked you if you examined the ledger or books.
A. The way I understood it, he meant my own individual accounts.

593 Q. Did you make an estimate of the amount of accounts that were owing to Mr. Foster and were on his books at the time you purchased Foster's books; when you say you agreed to let him have $3,000 for it?

A. I made an estimate of the accounts. I don't know what the amount was.
Q. You bought them, then, without knowing anything about them?
A. I bought them—yes, I bought them without knowing anything about it.
Q. Whether it was $10,000 he had on the books or $500?
A. It might have been either, for anything that I knew. I made no calculation.
Q. When did you descover that Foster had not paid his half for the water works?
A. I discovered it when I went into Ladd & Tilton's bank and lifted and paid off the notes. I then discovered that Foster had not paid anything.
Q. When did you do that?
A. I could not tell what the date was. I have the notes yet and I suppose that they would show when they were cancelled.
Q. How many years ago did you take up those notes?
A. It was a good many. I don't recollect when I did.
Q. Was it five years ago?
A. I think it is, but I could not say; but I think the bank generally puts the date on that the note is cancelled. If it is on that one it would show it, but whether it is or not I could not say.
Q. Where did you get the money to pay Conner and the Bank of British Columbia and Frank Parton's note and for the wheat that you claim that you bought in for him?
A. I gave my notes for some of it, borrowed some of it, sold some wheat for some of it, and some flour; and I can't tell now where I did get it all.

594 Q. How much did you get for the flour?
A. I could not say.

Q. What flour was it?
A. Flour that I ground and what I purchased from the farmers.
Q. That was out of this wheat in the mill; did you grind it?
A. Yes; I ground it from wheat that was in the mill.
Q. How much did you get from the wheat?
A. That I don't know.

Q. Did you run the mill right along immediately after you purchased it?

A. No.

Q. Did you run it for a month immediately after you purchased it?

A. Not at one time. I did not run it only a short time at once.

Q. Did you sell any wheat immediately after purchasing the mill?

A. I could not say. I think not.

Q. You paid Frank Parton's note in a very short time, did you not, after you purchased the mill?

A. I gave Frank Parton another note and lifted the one that I had endorsed for Foster.

Q. How long was it after the purchase before you paid Conner or the First National Bank of Albany?

A. Well, it was not long. I gave him another note for the one that he held against Foster. I gave him two notes for the one he held against Foster.

Q. How long before you took up those two notes?

A. I could not say.

Q. Where did you borrow money about that time?

A. I borrowed some in Portland here.

Q. Who of?

A. I borrowed some of Allen & Lewis.

Q. How much?

A. I borrowed $5,000, I think, at one time.

Q. Of who else did you borrow any?

A. From the savings bank here.

Q. How much?

A. I borrowed $5,000, I think, at one time.

595 Q. Did you borrow any more than that?

A. I think I did borrow $2,000 more, but it was not at that time; it was some time afterward.

Q. What did you do with this $10,000 that you borrowed?

A. I paid it out to parties that I had endorsed for Foster's notes.

Q. Who were they?

A. Conner got some, the Bank of British Columbia got some, and I think Frank Parton got some of it.

Q. Was that all you borrowed?

A. That is all that I recollect now that I got at the time.

Q. Did not you pay that $10,000 to the Bank of British Columbia on a note that you had endorsed for some one else at that time?

A. No, sir; I think not. I think I paid it on the Foster note to the Bank of British Columbia.

Q. Which $5,000 did you pay that Bank of British Columbia note with?

A. I think it was what I got from Mr. Lewis.

Q. Did you pay it all at one time?

A. Yes; I paid it all at once.

Q. The other $5,000 you took to Albany, did you?

A. I expect I did. I don't recollect, but I think I may most swear that I did.

Q. And you paid it on the Conner note?

A. Very likely.

Q. Do you remember the dates?

A. I do not.

Q. Did you get both of those $5,000 the same day?

A. No, sir.

Q. What was the difference?

A. I could not tell you.

Q. Did you take the money directly from Lewis'es to the bank and pay it on that note?

A. I think that I took a check on the First national bank—endorsed a check on the bank and handed it to the Bank of
596 British Columbia, and lifted the Foster note. That is as near as I can recollect that.

Q. Did you borrow any money within a few days after you purchased from Foster?

A. I don't recollect.

Q. How long after you paid off the British bank before you paid Mr. Lewis the $5,000?

A. I think it is not all paid yet.

Q. How long before you paid the savings bank?

A. It may be something like a year ago; I could not say what time.

Q. You think Mr. Stewart is mistaken in reference to that conversation you had with him, do you?

A. I think he is.

Q. Your memory is pretty clear on that, is it?

A. It is pretty clear; he may have been mistaken. I have no recollection whatever of such a conversation with Stewart at any time.

Q. You are sure, are you, that you did not say to him that those old notes given for the purchase price of the mill had turned up against you?

A. I am pretty certain that I never had such a conversation with Mr. Stewart about them notes.

Q. You think Mr. Anderson is mistaken in the conversation he testifies to, do you?

A. I think he is.

Q. And you are pretty sure on that point?

A. I have no recollection of having such a conversation with him. He talked a good deal when he came and continued to talk about it, so that I ordered him away and told him not to be talking so about me, and I had but very little conversation, and I think he must have been mistaken in the answers that I made to him, as I have no recollection about that.

Q. You think Mr. Baltimore is mistaken also in reference
597 to that conversation that he testifies to, do you, about the notes?

A. Yes; I think he is mistaken about that. I have no recollec-

tion of talking to him about that. It may be, and if I did say anything about 25 or $30,000 it must have been about notes that I had endorsed to different parties, but not to Foster.

Q. You did not tell him that you had found notes amounting to 30 or $35,000 that you had endorsed for Foster in the Bank of British Columbia?

A. No; I never told any person I had endorsed for Foster for that.

Q. You think Mr. Baltimore is entirely mistaken in that?

A. Well, he may be.

Q. You think Mr. Caldwell is also mistaken in the conversation that he testifies to that he had with you?

A. I don't recollect his conversation.

Q. In regard to Foster's going to run the mill just as he had before?

A. Well, I think he has misunderstood me in regard to that. I don't recollect what I said to him, but I know that I bought his wheat at the market price and gave him a note for the amount. That is about all of the conversation that I recollect with Mr. Baltimore.

Q. You think Mr. Goltra is mistaken about the conversation he says he had with you about Foster owing you $75,000, mostly in notes, that you had endorsed for him at the Bank of British Columbia?

A. I think that is a mistake or a misunderstanding. I have no recollection of any conversation about that.

Q. You did go down to Mr. Goltra's place of business a few days after the purchase from Mr. Foster and have a conversation with him in reference to that, did you not, and explain why you purchased it?

A. I have no recollection of it.

598 Q. Did you ever have a conversation with him about purchasing from Foster and the manner in which you had paid for it?

A. I don't recollect any such conversation, sir.

Q. If you had had you would have been likely to have remembered it, would you not?

A. I might have remembered it.

Q. Your impression is, then, at this time, that you never had a conversation with him in reference to that subject?

A. I have no recollection of it whether I ever gave any reason as to why I purchased the mill or how I paid for it.

Q. Was you ever in Mr. Goltra's office in his place of business in Albany?

A. I think I have.

Q. Was not you in his office a few days after you had purchased this property of Foster and explained your situation in reference to Foster and his property to Mr. Goltra?

A. I have no recollection of ever having discussed Foster's or my business with Goltra in reference to business there at his office or at any other place.

Q. Do you remember of going into the water works, pump, etc., to show them to Dr. Hill shortly after you had commenced operating the Albany water works?

A. I have no distinct recollection. I have shown a great many people the works and pumps and the way we furnished water to the people in Albany. Nearly everybody came to see the pumps and how they worked.

Q. Don't you remember having a conversation with him at that time in which you told him how much Mr. Foster owed you and the circumstances connected with them?

A. I have no recollection of telling him nor any one else of
599 what Foster was indebted to me.

Q. You heard Dr. Hill's testimony.

A. I heard his testimony, but I don't recollect it now particularly.

Q. You remember the substance of what he testified to in reference to that matter, don't you?

A. I heard him testify, but I don't recollect the language that he used; but if that was the language he used I have no recollection of having such a conversation with him at all.

Q. You don't recollect that conversation with Mr. Mantasce that you had, either, do you?

A. No, sir.

Q. All of those conversations have slipped your mind entirely, with Monteith, Anderson, Goltra, Caldwell, and Baltimore?

A. I don't know whether ever I had such a conversation with any of them. I don't recollect.

Q. If you did you have forgotten it?

A. Yes, I have forgotten it, if I ever had, or where it occurred. I have no idea of it if I did ever have such a conversation.

Q. You heard W. C. Morgan's testimony, did you?

A. Yes.

Q. Did he state that conversation and transaction substantially correct?

A. As far as I can recollect, the transaction of purchasing some wheat and getting a receipt for the balance is substantially correct. I recollect he proposed selling the wheat, and I went uptown and got the money and brought it down to pay for the wheat got from him. It was only a small amount. I don't now recollect how much it was.

Q. Do you think Mr. Monteith dislikes you at the present time?

A. Yes; I think he does.

Q. Have you any enmity towards him?

A. Not any.

600 Q. Did you try to purchase his property?

A. I did not.

Q. Did not you at one time try to get it bonded to you for $30,000?

A. I don't know what the amount was now. I was bonding my own property and I talked with Duncan Monteith of his uncle's property which he had bought; he had offered it to me

after he had bid it in for what he had bid it in at; I told him that I would like to have him get up a description of the property to send on East to parties to get purchasers for both of these properties; he agreed to do so and made out a list of all of his property and I took it up to Corvallis and laid it before Mr. Nash; I think he wished to send a description of my property and Monteith's to parties that wished to show it to some capitalists to get them to come and buy the property; after I had done so I think I spoke to Mr. Monteith—Thomas Monteith—about the property, and I told him that I wanted to get his description to go along with mine, as I was trying to sell it, and he told me something, I don't recollect what he said, but I think he said that it did not belong to him; I don't quite recollect what answer he did give me; then he went on to see his nephew, Duncan Monteith, and told him that he did not want his property put into my hands; and then I met him again; Duncan and I was talking it over again and he, Thomas, came up, and he said that he wanted to do his business honorable; that he thought it was too much for him to put it into my hands for to cheat his creditors. I said, "Mr. Monteith, I want to take no advantage of your creditors." I thought it might be to his advantage for to put his property along with mine for to try and sell it. Then he said he did not think so, and he did not want Duncan to do that; and I told him, "Mr. Monteith, I will have nothing to do with it."

601 Q. His property afterward was sold?

A. No; it was afterward was sold; Duncan had bid it in.

Q. It was afterward sold to Col. Hogg, was it?

A. So I understood.

Q. And Monteith has an idea that you assisted in making that sale, in enabling them to get that property?

A. That is what he said; that there was men trying to buy, and that men was trying to rob him.

Q. He claimed that this cyndicate had robbed him out of about $30,000?

A. Out of a large amount; I don't know the amount that he named. I told him that I had nothing to do with it whatever.

Q. That seemed to satisfy him, diden't it?

A. Well, no; it did not; he said the property was sold and he was not satisfied.

Q. You have met him frequently?

A. Yes; occasionally.

Q. Had frequent conversations with him?

A. Well, no; very little; he goes past me now and I speak and he answers.

Here court adjourned till nine o'clock to-morrow morning, December 28th.

Court convened at the hour appointed, Dec. 28th, and the case proceeded, JOHN A. CRAWFORD still on the stand.

Cross-examination continued.

Questions by WEATHERFORD:

Q. You were in the habit of loaning money to individuals in Linn county to some extent, were you, in the last few years?

(Objection by Flinn as immaterial, irrelevant, and not cross-examination.)

A. I had to some small extent for the last few years.

602 Q. You generally complied and intended to comply with the law in all respects, did you?

(Objection by Flinn, same as last above.)

A. I expect so.

Q. In all of your transactions?

(Same objection by Flinn.)

A. Yes; I think so.

Q. It was very seldom that you loaned money on usurious contracts, was it not?

(Same objection by Flinn.)

A. I don't understand what contracts you mean.

Q. Do you understand what usury is?

A. Yes; usury is interest on money, ain't it?

Q. Illegal interest—more than the law allows you to charge.

A. Oh, I think not.

Q. You never have made contracts of that kind, have you, charging more interest than the law allows you?

A. No, sir; I never did, that I know of.

Q. You would have been likely to know of it if you had, would not you?

(Objection by Flinn, same as last several above and same objection also to the last several questions above.)

A. I think so.

Q. You always knew what the right interest was—the rate allowed by law, did not you?

(Same objection by Flinn.)

A. Yes; I think so.

Q. Where did you keep those notes that were owing to you and William Crawford by Foster?

A. They were kept in the safe at the house.

Q. Were they kept there prior to the time that the new notes in lieu of the old ones, as has been explained in your deposition?

603 A. Yes; they were kept in the same place.

Q. In Linn county?

A. Yes.

Q. Were you acquainted with Mr. F. M. Daniels?

A. I am not.

Q. Were you acquainted with Mr. R. Cheadle, that was a member of the grand jury at the time that you were indicted in Linn county?

A. R. Cheadle? I think I know Cheadle. I have no acquaintance with him; I know him when I see him.

Q. He lives out at Lebanon?

A. Yes.

Q. Are you acquainted with T. P. Goodman?

A. I don't think I know him.

Q. Do you remember of Mr. Hardman asking you the question, when you were before the grand jury, if Foster did not owe you a lot of money, and you answered it, "No, sir; he don't owe me a cent"?

A. I have no recollection of any such question being asked me.

Q. If you did answer it that way, you told the truth, did not you?

(Objection by Flinn as immaterial, irrelevant, and as trying to get the witness to answer a supposition of an occurrence which he denies as false.)

A. I don't think I answered it and I don't think it was asked me. I don't recollect it.

Q. Whatever answers you gave there were under oath, were they not?

(Objection by Flinn, same as last above.)

A. I could not say whether it was under oath or not.

Q. Do you know whether you were sworn or not?

A. I don't think I was.

Q. Do you remember that Mr. Fisher swore you to tell the truth, the whole truth, and nothing but the truth, &c.?

(Objection by Flinn, same as above.)

A. I don't recollect.

604 Q. You intended and did tell those men on that grand jury the truth on every proposition you testified to, diden't you?

(Objection by Flinn, same as above.)

A. If I testified I testified to the truth as far as I knew; I don't know whether I was sworn in or not.

Q. You told the truth, even if you had not been sworn, and intended to tell the truth, diden't you?

(Same objection by Flinn.)

A. I don't recollect any questions being asked me by the members of the grand jury; I went in and made my statement.

Q. There was a number of charges in the indictment, was there not?

(Objection by Flinn, same as above.)

A. I could not say how many charges was in the indictment.

Q. Several besides the one in reference to the Odd Fellows' Hall Building Association?

A. I could not tell now how many there was, or what they amounted to.

Q. Your memory is not very good, is it, Mr. Crawford?

A. Well, it is about medium, I suppose.

Q. Do you frequently forget?

A. Sometimes I do, and sometimes I don't.

Q. When did John Burkhart come to you and apoligize for the testimony he gave in the grand-jury room?

A. He did not come to me and apoligize.

Q. He never did that at all?

A. No, sir; he never came to me at all.

Q. And you never had any conversation about that at all?

A. We did have a conversation, but he did not apoligize; he said he was mistaken.

Q. When did he do that?

605 A. Well, I could not say; it was during the time of the court.

Q. Was that the time that you were about to have a fight with him?

A. Yes; well, he was—I was going to have no fight with him; he said, with regard to what he had testified to, that he was mistaken, and that he would go up to the court and he would take it all back.

Q. Do you know whether the grand jury found an indictment on his statement or not?

A. I don't know what they found it on; I suppose so.

Q. Don't you know there had been a number of persons before the jury?

A. Yes; there was a number of persons, I suppose.

Q. On that case of yours?

A. Yes; I think there was.

Q. Quite a number of names endorsed on the back of the indictment?

(Objection by Flinn as immaterial and not cross-examination, and because the indictment is the best evidence.)

A. I don't know what the indictment was, or whether I ever saw it or not.

Q. Did not you see a copy of it?

(Objection same as above.)

A. I may have seen it, but I can't positively say whether I did or not. I heard it read.

Q. Have you read over your testimony since you have been in Portland that you gave in the case of Goltra *vs.* Crawford and Foster, before Judge Boise in Linn county?

A. I read a part of it.

Q. Did you read Foster's testimony?

A. I did not; I think not.

Q. You are not certain about that?
A. I think he left the paper here and I read a few questions and answers of Foster's—two or three questions asked him.
606 Q. You heard his testimony here, did you?
A. Yes.
Q. You read all of your testimony over, did you, that you gave in the other case?
A. I did not.
Q. What part did you read?

(Objection by Flinn as immaterial, irrelevant, and not cross-examination.)

A. I read a part of the first questions and answers and part of the last of the cross-examination.
Q. How often did you read it?

(Same objection as above by Flinn.)

A. Once.
Q. Since you have been down here in Portland this time?
A. No, sir; I have not seen it since I have been down this time.
Q. Last week you did?
A. Yes; it was last week I read it.
Q. Did you take your memorandum with you?
A. Yes.
Q. Who was present when you were reading it?
A. Mr. Flinn and I room together.
Q. Was he present when you read it?
A. He was in bed when I read it.
Q. Did he read a portion of it to you?
A. He did not.
Q. Was your attention called to any particular part of it?
A. No, sir; no one spoke to me about it.
Q. At the time you were reading it?
A. No, sir.
Q. Afterward?
A. No.
Q. Are you certain about that?
A. Yes; I am certain that no person said anything to me or made any remarks about it. I read it along.
Q. Have you testified in this case as your evidence appears in that case, so far as you have read it?

(Objection by Flinn, same as above and also that the record of the other case is the best evidence of what he testified in that
607 case.)

A. I think I have.

Redirect Ex.

Redirect examination by FLINN;

Q. Have all of the other witnesses testified about the same in this case as they did in the other case?

A. I think substantially the same, or as near as I could judge from the evidence that I heard.

Q. Do you know whether Mr. Goltra and the other witnesses had a copy of their testimony in the other case or not?

A. I do not.

Q. Did their counsel, Mr. Weatherford, have a copy of it here during the examination?

A. I could not say; I don't know.

Q. In regard to the Odd Fellows' Hall Building Association indebtedness, is it not true that that company owed your brother William and that you showed to John Burkhart the note that was made to your brother at the time he said he was mistaken in stating that they were owing you?

A. That is what he said convinced him at the time that he saw the note.

Q. At the time you purchased the book accounts, on the sixth of Feb., 1884, of Foster you say you had no personal knowledge of what they contained. Did Foster tell you about the amount of them?

A. He did.

Q. State what confidence, if any, you put in his statement in regard to the matter?

(Objection by Weatherford as immaterial and not proper redirect examination.)

A. I have confidence in Foster's word, being acquainted with him so long; I have always found him pretty correct.

608 Q. You stated something about having a safe at the house What kind of a safe is it, a fire-proof or burglar-proof safe?.

A. It is an old-style safe—Tilton & McFarland's make.

Q. Have you and your brother always kept it there?

A. Yes, sir.

Q. State how you ascertained the amount of wheat that was in the mill at the time or soon after you purchased it of Foster.

(Objection by Weatherford as having been gone over in direct examination.)

A. I told Mr. Beam to weigh the wheat in the mill and warehouse and give me the correct statement of it and he did so.

Q. You said something about Foster getting flour out of the mill after he sold it to you. Do you know whether he paid for the flour?

A. I do not.

Q. Have you any knowledge whatever or have you ever looked at his accounts on the books so that you can say whether or not the flour he got out of the mill was paid for?

A. I could not say now. I have not looked at the books lately; some flour that he got may have been on the books and some may not; I can't say.

Q. Do you know whether any charge was made on the books for any of the feed or flour that he got?

A. There was some charges on the books the last time I saw them.

Q. You don't recollect the amount of it?

A. I could not say as to the amount. It was only a few dollars.

Q. Your attention has been called to a note that you signed with Foster to Flinn. Was not that note signed before the sale?

A. I believe it was. I don't recollect much about it when it was signed. I had forgot all about it. I know it was not put in as part of the price of the mill.

609 Q. I did not ask you about that. Do you recollect the date on which you purchased the Santiam ditch or canal?

A. I think it was some time in April.

Q. Was it not the 15th of April, 1876?

(Objection by Weatherford to the manner of asking questions.)

A. Yes; I believe it was the 15th of April, 1876.

Q. When was the deed made to you of the property of the Santiam ditch and canal?

A. I think that is about the date of it.

Q. Do you recollect what you agreed to pay for that property?

A. I do.

Q. How much?

A. It was $33,900.

Q. Do you recollect how you paid it?

(Objection by Weatherford as immaterial and not pertinent matter in the case.)

A. I do.

Q. Were those notes that Foster surrendered up to you on the 28th of April, that were signed by William Elkins and others, a part of that transaction?

A. They were a part of that transaction.

Recross.

Recross-examination by WEATHERFORD:

Q. When did Beam weigh the wheat?

A. Shortly after I purchased the property.

Q. How long after?

A. Well, I think he commenced on it a day or two after I bought it.

Q. Who assisted him?

A. I could not say. I think he did it himself.

Q. Did Gray assist him?

A. I don't think he did.

Q. Did Pipes?

A. I don't think Pipes was there.

Q. Did Chiswell?

A. I don't think he did.

Q. He did it all himself, did he?

A. I don't think the hands assisted him. He may have
610 had assistence to shovel the wheat, but I don't think he did. He was in the mill by himself.

Q. How much did he say the wheat weighed in the mill amounted to?
A. Well, I think it was somewhere between 13 & 14,000 bushels.
Q. Was that all that he weighed?
A. That was all there was there.
Q. You think it was somewhere between 13 and 14,000 bushels?
A. I think that was about all that there was there.
Q. How many days did it take him to weigh that?
A. I could not say as to how many days.
Q. As many as two days?
A. I think it would take him more than that.
Q. Six?
A. I could not say.
Q. Were you ever in when he was weighing it?
A. I think I was in.
Q. Who did you see there?
A. I saw Beam.
Q. Who else?
A. I can't say.
Q. Did you see Foster?
A. I think not.
Q. Bob Foster?
A. I think Bob Foster was in there.
Q. Did you have him employed?
A. Yes; I had him employed for a few days—a short time.
Q. Did you ever see Foster pay for any flour?
A. I did not.
Q. Have you ever heard of him paying for any flour?
A. I don't think I did.
Q. You knew he got flour there, did not you?
A. I have seen his name on his account where he was charged for a sack of flour.
Q. Did he pay for any feed that he got?
A. I could not say.
Q. He got wheat there some, did he not?
A. I never saw him get any.
Q. Did you notice any charged on the book?
A. I noticed some charged.
Q. Did he ever pay for that?
A. I could not say.
611 Q. You never took it from the amount of wages you were paying him?
A. I never took it out.
Q. You don't remember when the Flinn note was given?
A. I don't.
Q. Whether before or after the sale?
A. I have no recollection of Flinn having a note until Baltimore was taking depositions in the mill office, and I think I asked some one how it came up. I asked Judge Flinn about it, and he said he had a note by Foster endorsed by me.

Q. When did you buy the Santiam canal?
A. April, 1876, I think.
Q. What time?
A. About the middle of the month.
Q. April, 1876?
A. I think so.
Q. Who did you pay for the canal?
A. I think it was John Conner.

Re-redirect.

Re-redirect examination by FLINN:

Q. Who did you buy the canal of?
A. I bought it at public auction of the Santiam Canal Co.
Q. Well, why did you pay John Conner, if you did pay him?
A. I think he was treasurer of the company.

J. A. CRAWFORD.

W. S. Sibson.

W. S. SIBSON called and sworn on behalf of defendants.

Questions by FLINN:

Q. State your name, age, residence, and occupation.
A. W. S. Sibson; aged 40; residence, Portland, Oregon; occupation, shipping and commissions merchant and general insurance agent, a member of the firm of Sibson, Quackenbush & Co.
Q. Were you one of the firm of Sibson, Church & Co. on February 6th, 1884?
A. I was, sir.
Q. Who composed the firm at that time?
612 A. Myself, C. P. Church, E. Quackenbush, and S. Farrel.
Q. When did Mr. Church withdraw from the firm or sell his interest?
A. To the best of my knowledge it was towards the close of the year '85. Mr. Church sold out and withdrew from the firm, to the best of my recollection. It was then. I don't remember exactly.
Q. Had he sold out in August, 1885?
A. I don't think he had.
Q. Is your recollection pretty clear on that subject?
A. Yes; I think it is. My recollection is that it was towards the close of the year of 1885.
Q. What were the terms of that sale? Upon what terms did Mr. Church withdraw or sell out?

(Objection by Wood as immaterial and irrelevant.)

A. Mr. Church withdrew from the firm, selling all of his interest in the same for the consideration of one dollar, being still liable for his share of the liabilities of the firm outstanding at the time of his selling out.

Q. Do you mean that he sold all of his interests in the assets of the firm for one dollar?

(Objection by Wood, same as above.)

A. Yes, sir.

Q. Did the other partners or members of the firm agree to release him from all liabilities?

(Same objection by Wood.)

A. No, sir.

Q. What assets did the company have at that time?

(Same objection.)

A. They had a considerable amount of property in book accounts and real estate and stock, mill stocks, &c.

Q. And one dollar was all the consideration that Mr. Church got for all of his interest in all of that?

(Same objection by Wood.)

613 A. Mr. Church had a debit balance on the ledger for money which he had drawn amounting to somewhere about $20,000, and one dollar was all that he got when he retired from the firm.

Q. Did not each of the other partners have a debit balance also?

(Objection by Wood, same as above.)

A. No, sir.

Q. Was Mr. Church's debit balance account allowed as a part of the consideration?

(Same objection by Wood.)

A. No, sir.

Q. Was the claim which Sibson, Quackenbush & Co. afterward sued J. H. Foster for included in that sale?

A. It was not.

Q. When did you purchase that claim of Mr. Church or purchase Church's interest in it?

(Same objection by Wood.)

A. Sibson, Quackenbush & Co. liquidated and are now liquidating the affairs of Sibson, Church & Co.

Q. Please state now when you purchased the interest of Mr. Church in the claim which Sibson, Church & Co. had against James H. Foster.

(Objection by Wood, same as above.)

A. At the time he withdrew from the firm he assigned all his rights, title, and interest in the firm of Sibson, Church & Co. to the remaining parties.

Q. Was that claim of Sibson, Church & Co. against Foster included in that assignment?

(Same objection by Wood.)

A. Everything was included.

Q. What did you consider that worth and what part of the consideration that you paid him?

A. We then thought it was worth full value.

Q. And you paid him one dollar for his interest in a claim of $13,000?

(Objection by Wood, same as above.)

614 A. One dollar was the consideration upon which he withdrew from the firm.

Q. And you consider-d the claim worth $13,000 at that time, did you?

A. We thought that claim was worth the money.

Q. Is it not true that you sent Mr. Church up to Albany immediately after the sale of Foster to Crawford to inquire into the claim?

(Objection by Wood, same as above.)

A. Mr. Church was then a partner in the firm and went to Albany to find out the state of affairs.

Q. Did he report to you that the claim was worthless?

(Same objection by Wood.)

A. He reported to us that he thought it was a fraudulent transfer.

Q. Did not he report to you that the claim was worthless, as he thought?

(Same objection as above by Wood.)

A. Not to the best of my recollection.

Q. And you only paid him a dollar for it afterwards?

(Objection by Wood, same as above.)

A. The consideration was only one dollar when he retired from the firm.

Q. He is still held for the liabilities of the firm, is he not, the same as the other members of the firm of Sibson, Church & Co.?

(Same objection as above by Wood.)

A. He is, sir.

Q. Is your recollection pretty clear as to the time he sold out and as to all of these things you have been testifying to?

A. My recollection is pretty clear as to the time.

Q. How much did James H. Foster owe the firm of Sibson, Church & Co. on the 6th of February, 1884?

(Same objection as above by Wood.)

615 A. I don't know.

Q. Can you tell from your books?

(Same objection by Wood.)

A. I expect I could.

Q. Will you be kind enough to bring those books this afternoon?

(Objection same as above by Wood.)

A. I will do so.

(Here a paper was handed to witness.)

Q. You may examine that and state whose handwriting it is.

A. It is our book-keeper's writing.

Q. Was it made out by your instruction and under your supervision?

A. It was made out in the usual course of business; I don't recollect whether he was specially instructed to make it out or not.

(The paper above referred to is the one marked "Exhibit 2" and heretofore offered in evidence.)

Q. Do you know whether you ever saw that paper before or not?

A. Oh, I expect I saw it, as the accounts that are made out are usually submitted to me.

Q. You may examine the paper marked "Exhibit 3" and state whether you ever saw that before. (Witness examines paper.)

A. I did.

Q. Whose handwriting is that?

A. It is my own writing.

Q. State whether you sent the information that contains to Mr. Foster about August 15th, 1885.

A. My impression is that I sent that in a registered letter to Mr. Foster at that time.

Q. Are the statements in it substantially correct?

A. They are, sir.

Q. Will you state from that how much Foster owed you on the 6th of February, 1884, as there stated?

Objection by Wood, same as above, and also as incompetent.

A. This account does not refer to February; it refers to April 15, 1885, on which date Mr. Foster owed us $13,034.96.

616 Q. What is the amount of all the charges prior to Feb. 6th, 1884, as stated upon that paper?

Objection by Wood, same as last above.

A. I don't understand the question.

Q. What is the amount charged as written upon that paper prior to Feb. 6th, 1884?

(Same objection by Wood.)

A. You mean the debit entries upon this?

Q. I mean the charges you had against Foster prior to the time, Feb. 6th, as shown there.

(Same objection by Wood.)

A. The amount shown here as prior to that date is $6,060.61.

Q. Are there any credits prior to that date?

(Same objection.)

A. There are none.

(Here the two papers "Exhibits 2 & 3" are again offered in evidence by counsel for defendant.)

Objection by Wood, for complainant, as incompetent, irrelevant, and impertinent for the purpose for which they are offered.

Q. Do you recollect of getting some flour from the Bank of British Columbia on an order from James H. Foster?

Objection by Wood as irrelevant and immaterial.

A. I recollect a great many such orders.

Q. Do you recollect of getting 10,000 sacks at one time upon which you paid an advance that had already been paid to Foster by the Bank of British Columbia about the month of March, 1884?

(Objection by Wood, same as above.)

A. I have some recollection of that.

Q. Can you now state how long after the sale to Crawford by Foster it was that you got that flour of the Bank of British Columbia?

(Objection by Wood, same as above.)

A. I don't think it was after the sale at all; I think it was before.

617 Q. Are you pretty certain of that, Mr. Sibson?

A. I am not very certain of it. I recollect that after the sale the Bank of British Columbia instructed us to sell some of Foster's flour for account, but the flour we shipped for Mr. Foster, for which we made him an advance; I think the order was made before the sale.

Q. I have not referred to the flour upon which you made him an advance; I have referred to the lots of flour the Bank of British Columbia made an advance on. Did you get that flour before the sale to Crawford by Foster?

(Same objection by Wood.)

A. I don't think we got any flour for Foster's account from the Bank of British Columbia after the sale, excepting the lots I spoke of.

Q. Will your books show when you got that flour from the Bank of British Columbia and when you paid the bank the amount of money on it?

(Same objection.)

A. I think they would.

Q. Will you be kind enough to bring them—your books—here this afternoon, those relating to that, for the purpose of inspection as to that circumstance?

A. I will.

(Here, on objection by counsel Wood, a *subpœna duces tekum* is ordered for that purpose and served on the witness.)

Q. Do you recollect whether Sibson, Church & Co. or Sibson Quackenbush & Co. sued Foster for that account?

(Objection by Wood as immaterial, irrelevant, and incompetent; that this suit is brought on a judgment already recovered which cannot be gone into or attacked collaterally, and moves to strike out all of the preceeding examination of this witness upon that subject.)

(Here a paper, copy of "Exhibit A," is shown to witness.)

—. Mr. Sibson, please explain that paper and state whether
618 you signed that paper.

A. I did.

Q. Who signed it as witnesses?

A. Mr. Reynolds and Reginald Thompson.

Q. When did you sign it?

A. On the 11th of June, 1886.

Q. Who else signed it?

A. Mr. Quackenbush and Mr. Farrel.

Q. Were you all present when it was signed, at one time?

A. My impression is that Mr. Quackenbush and I were present, and Mr. Farrel signed it later in the day.

Q. Was Charles H. Neal there?

(Objection as immaterial by Wood.)

A. No, sir.

Q. Who is this Charles H. Neal? Are you acquainted with him?

(Objection by Wood, same as above.)

A. I am acquainted with his attorney-in-fact.

Q. I asked if you were acquainted with him. I am not talking about his attorney-in-fact.

(Same objection by Wood.)

A. Not personally.

Q. Who is his attorney-in-fact that you are acquainted with?

A. Mr. William M. Ladd.

Q. What was the consideration of your signing that paper, and Mr. Quackenbush and Mr. Farrel signing it?

(Same objection by Wood.)

A. The consideration was one dollar and other valuable considerations.

Q. Well, tell it all, please?

A. The other consideration was Mr. Neal's note for $5,000, which we received.

Q. Have you that note?

A. We have cashed the note and the proceeds are credited to the account of Sibson, Church & Co.

Q. Where did you cash it?

A. At Ladd and Tilton's bank.

Q. Did William Ladd pay you the cash?

Objection by Wood as irrelevant and incompetent.

A. The money was put to the credit of Sibson — Church's account. I don't know who did it.

Q. Did you see it charged on their books or on yours?

619 (Objection by Wood, same as above.)

A. I have not seen their books, but we have received notice that we were credited with that amount.

Q. Upon that note?
A. Yes, sir.
Q. Did you give up the note?
A. Yes, sir; we did.
Q. When?
A. At the time we received it.
Q. You gave it up at the time you received it?
A. Yes, sir; we did. We received the note and endorsed it and paid it in and received credit for it in our account or the proceeds of it.
Q. You received the note and endorsed it. Do you know whether the note has been paid or not?

(Objection by Wood, same as above, and as already testified to.)

A. It has not.
Q. When was it payable?

(Objection by Wood as immaterial and irrelevant.)

A. One day after date.
Q. Who signed Neal's name to the note?

(Objection by Wood as immaterial, irrelevant, and incompetent, and that the note would be the best evidence on that.)

A. My recollection is that it was signed by William M. Ladd, as attorney of Charles A. Neal, and William M. Ladd, as attorney-in-fact.
Q. Were you at the time that note was given carrying on business for W. S. Ladd, the father of William M. Ladd?

(Objection by Wood as irrelevant and immaterial.)

A. No, sir.
Q. Is it not true that the business of Sibson, Quackenbush & Co. is carried on in the interest of W. S. Ladd?

(Objection by Wood as irrelevant and immaterial.)

A. It is entirely untrue.
Q. Has W. S. Ladd any interest in the business?

(Objection by Wood, same as above.)

A. None whatever.

(Here court took a recess until half after one o'clock.)

620 Court convened at the hour appointed, and the case proceeded, witness SIBSON still on the stand.

Direct examination continued by FLINN:

Q. Was Sibson, Church & Co. largely indebted at the bank of Ladd & Tilton on or about the 6th of February, 1884?

(Objection by Wood as immaterial and irrelevant.)

A. We did our business with Ladd & Tilton, and we were largely in debt at that time.

Q. Were you engaged in the milling or wheat business during that year?

(Objection by Wood, same as above.)

A. We were.

Q. Is it not true that the price of breadstuffs had largely depreciated during the fall and winter of 1883 and immediately prior to the time Foster deeded his property to Crawford?

(Same objection by Wood.)

A. It is true.

Q. And did it not continue to depreciate for one or two months more?

(Same objection by Wood.)

A. It did.

Q. Has the business ever entirely recovered from that depression and regained its former prosperity?

(Same objection by Wood.)

A. Yes; I may say it has regained its former prosperity, but upon a lower basis of prices.

Q. How long did the depreciation continue after the sale by Foster to Crawford, as you now remember it?

A. As I now remember it, the sale by Foster to Crawford was made in February, 1884. The depreciation continued probably until the next fall—that is, what I mean to say is that in February, 1884, there was still a large amount of currant business of that season which was unsettled and not settled up until the following year, so that I may say that the depression continued until the end
621 of that season, when we commenced a new season upon a lower basis of prices.

Q. Did the price of breadstuff continue to depreciate from February, 1884, until about June of the same year, when they reached their lowest price?

A. No, sir; they have been declining almost continually ever since, and wheat was lower at the beginning of 1886 than it was in that year. I mean to say, when I say lower, lower in England, the selling market.

Q. Will you now please refer to your books, if you have them here, and ascertain the dates when you received the 10,000 sacks of flour of the Bank of British Columbia, referring to this point?

A. (Witness complies, producing books.) On February 11th, 1884, we paid the Bank of British Columbia $18,500, advances they had made to Foster on 10,000 cental sack- of flour. On April 15th we paid them the warehouse charges, which they had paid to the railroad Co., $650.00, making a total of $19,150 which we paid the Bank of British Columbia on that 10,000 centas sacks of flour.

Q. Why did you take that flour if you knew that Foster had failed?

(Objection by Wood as immaterial and irrelevant.)

A. Mr. Foster sent us an order for that flour previous to the time that he failed, and engaged freight-room by the ship Liverpool from us, and we took the delivery of the flour after he had failed, because we thought that there would be some margin between the price to be obtained for it in Liverpool and the price which the Bank of British Columbia had advanced to Foster, which we thought could be collected for his account and placed to our credit.

Q. Was it not at your option whether you paid the Bank of British Columbia and took the flour or not?

(Same objection by Wood.)

622 Q. In other words, were you compelled to take the flour and pay the Bank of British Columbia under any contract?

A. Yes.

Q. Will you please produce that contract?

(Same objection by Wood.)

A. I will produce it, but I shall have to get it from the office. It is not in the form of a contract, but in the form of correspondence.

Q. Will you produce it to-day?

A. I will as soon as I can.

Q. Is it not true that your firm in the milling business and in the wheat business made large losses that year?

(Same objection.)

A. Yes; our firm, as a firm, on their own transactions, did not make very large losses, but we made losses which were composed of such cases as those of Foster's and other persons who failed in business and were unable to pay us for the losses which we had to pay or had advanced in their business.

Q. Were your firm managing the business of the Albina mills or mills which are just below Albina?

(Same objection by Wood.)

A. We were.

Q. Did that mill make large losses that year?

(Same objection.)

A. They did.

Q. Was that mill sold or turned over to Mr. Ladd or to Ladd & Tilton for money advanced by them?

A. It was not.

Q. Who owns that mill now?

(Same objection by Wood.)

A. The Portland Flouring Mills Co.

Q. Who owns the stock of that mill?

(Same objection by Wood.)

A. I don't know.

Q. Is it not true—was not the stock of that mill turned over to Mr Ladd or to Ladd & Tilton to pay the money advanced by them?

(Objection by Wood, same as above.)

A. What stock?

Q. The stock of the Portland Flouring Mills Co.

623 (Same objection by Wood.)

A. The stock of the Portland Flouring Mills Co. was held by a considerable number of stockholders, who at a meeting of the stockholders duly called for the purpose by a marjority instructed the directors to sell the property to pay its debts if a purchaser could be found.

Q. What was done under that resolution?

(Same objection by Wood.)

A. The property was sold.

Q. To whom?

(Same objection.)

A. I believe that Mr. C. A. Neal, the complainant in this suit, was the purchaser.

Q. For what amount?

(Same objection by Wood.)

A. I don't know.

Q. Was it sold for half the original cost?

(Same objection by Wood.)

A. I think it sold for a good deal more than that.

Q. Do you know what the original cost was?

(Same objection.)

A. Speaking from memory only, I think it was in the neighborhood of 230 or $240,000. I would say, however, that the original cost was in excess of the amount of stock which was subscribed.

Q. Don't you know that it was bid in for less than $125,000?

(Same objection by Wood.)

A. I do not.

Q. Do you know what it was sold for?

(Same objection by Wood.)

A. So far as the stockholders were concerned it was sold for the amount of the indebtedness.

Q. I am asking for the price for which it was sold to Neal.

(Objection by Wood, same as above.)

A. I stated before that I don't know.

Q. Were you one of the original stockholders at the time of the sale?

624 (Same objection by Wood.)

A. I was.

Q. Were you secretary of the company?

(Same objection.)

A. I was not.

Q. Was there a price agreed upon at the time it was voted to be sold?

(Same objection by Wood.)

A. I think there was a resolution passed to this effect, but I am speaking only from memory.

Q. Who was president and secretary at the time?

(Same objection.)

A. W. S. Ladd was president and James Steel was secretary.

Q. The president and secretary were instructed to sell the property, were they?

(Same objection by Wood.)

A. I said before that the board of directors had instructed it to be sold.

Q. Did Sibson, Church & Co. or Sibson, Quackenbush & Co. turn over to Ladd & Tilton's bank as security for what they owed it this claim which they held against Foster?

(Same objection by Wood.)

A. We never did.

Q. At the time that Sibson, Quackenbush & Co. transferred this judgment and took the note of Charles A. Neal, signed by William M. Ladd, was there any agreement or understanding that Sibson, Quackenbush & Co. should ever have any other consideration for that claim or judgment in case it was collected?

A. None whatever.

Q. What was the object of making that sale?

(Objection by Wood as immaterial and irrelevant.)

Q. Was it for the purpose of getting the claim litigated in the United States courts?

625 A. The object was for us to pay this consideration for which we made the sale of it.

Q. Have you or your firm any interest in the result of this litigation, directly or indirectly?

A. We have none; we have received $5,000, and we have nothing else to do with it.

Q. In case the result should be unfavorable to the complainant are you to return or account for in any way to Charles A. Neil or to Mr. W. S. Ladd or William M. Ladd or to Ladd & Tilton's bank for that $5,000 or any part of it?

A. We are not. We are not; the matter is closed so far as we are concerned.

Q. Who commenced the negotiation for the sale of the judgment?

(Objection by Wood as irrelevant and immaterial.)

A. I did.
Q. With Charles A. Neal?
A. No, sir.
Q. With whom?
A. With William M. Ladd.
Q. Well, in behalf of Charles A. Neal, to sell to him?
A. To sell. I asked him if he knew of any one who would buy that judgment and he said Charles A. Neal. I said William M. Ladd, but it was Mr. Wilcox; it was not Mr. Ladd in the bank.
Q. Were you present when the property of the Portland Flouring Mills Co. was sold to Charles A. Neal?

(Objection by Wood as irrelevant and immaterial.)

A. I was present when the stockholders authorized it and instructed the stock to be sold.
Q. Were you present when it was instructed to be sold at private sale?

(Objection by Wood, same as last above.)

626 Q. Please answer the question.
A. I was present when it was instructed to be sold, but not when it was sold.
Q. You don't know who negotiated on behalf of Charles A. Neal?

(Objection by Wood, same as above.)

A. I do not.
Q. Was it discussed in the stockholders' meeting as to who it was to be sold to?

(Same objection by Wood.)

A. I think not. The directors were instructed to find a purchaser if they could.
Q. Have you the order which you received from Mr. Foster for the flour?
A. I have, sir.
Q. Please produce it.

(Witness complies, and the order produced is offered in evidence on behalf of defendants and the master requested to mark it. It is marked accordingly "Defendants' Exhibit 26.")
(By WITNESS:) I should like to retain the original.

Q. Have you the correspondence between yourself and Mr. Foster that followed in regard to that flour order?
A. We have the correspondence.
Q. Will you now please read the order so that it can be taken down, and then the correspondence in the order in which it occurred?

A. I will; but I will say in explanation that in order to make it intelligible before the order——

Q. Will you please produce the order and the correspondence?

A. Yes; here it is.

(Here the order and the accompanying correspondence are produced and offered in evidence on behalf of defendants and the master requested to substitute copies thereof to be used as evidence in this case.)

(Objection by Wood as immaterial and irrelevant.)

(The order is received, a copy made and marked "Defend-
627 ants' Exhibit 26," and copies of the letters are made and marked respectively "Defendants' Exhibits 27, 28, 29, 30, & 31.")

Q. Now, which of those letters bound you to pay the Bank of British Columbia and take the flour whether you desired to or not? Please refer to it by its number as marked by the master.

A. None of them.

Q. State, if you know, how much or about how much Sibson, Church & Co. owed Ladd & Tilton at the time of this sale of Foster's to Crawford.

(Objection by Wood as irrelevant and immaterial.)

A. Well, I decline to answer the question unless compelled to by Judge Deady, for I think it is none of your business. I want to say that I feel at a disadvantage in answering the questions of Judge Flinn, as Mr. Flinn is a brother-in-law of Mr. Church, who was at the time of the sale by Foster to Crawford a member of our firm. We were in our office in Portland, Mr. Flinn, Mr. Church, and myself, consulting regarding the matter in question, asking his advice as to what steps we could take for the litigation of the debt of Foster's. The amount could not then be specified, for the reason that large shipments of flour belonging to Foster were on the way to England; but we fully explained the situation to Mr. Flinn with the view of getting his advise, and I will say further positively that Mr. Flinn at that time expressed it as his opinion that the sale by Foster to Crawford was fraudulent and made to avoid his creditors.

Q. At the time that Mr. Church sold his interest in the firm of Sibson, Church & Co. to the other members of the firm did not you owe or did not the firm of Sibson, Church & Co. owe largely at the Ladd & Tilton bank?

(Objection by Wood, same as above.)

628 A. I decline to answer that on the same grounds as before.

Q. At the time that you, that Sibson, Quackenbush & Co. sold this judgment to Charles A. Neal, did Sibson, Church & Co. at that time owe at Ladd & Tilton's bank?

(Same objection by Wood.)

A. I decline to answer that.

Q. Was the credit of $5,000 that you received at Ladd & Tilton's bank given on Sibson, Church & Co.'s account?

(Same objection.)

A. Yes; it was.

Q. Was it not in part payment of what Sibson, Church & Co. owed the bank at that time?

(Same objection by Wood.)

A. I decline to answer that question unless instructed by the court to do so.

Q. Well, do you feel at a disadvantage if you intend to tell the whole truth about it, about this matter?

A. I feel at a disadvantage because at the time of the conversation with yourself, Judge Flinn, which I mentioned previous, we had not obtained a judgment, and our claim was only an open account, and we consulted with him as to what manner of suit should be brought for its recovery.

Q. Did you employ me to bring the suit?

A. We did not bring the suit at that time. We waited until the amount upon account could be ascertained after the various shipments of flour had been sold in Liverpool, and we did not employ him finally.

Q. Did you employ me to do anything about that claim?

A. No; the talk we had was simply preliminary with a view of commencing the suit.

Q. Are you interested in any way in the result of this litigation or your firm?

629 (Objection by Wood as immaterial and irrelevant.)

A. We are not.

Q. Why do you feel at any disadvantage at all, then, in reference to this matter if it is immaterial to you how the case goes?

A. We have made Mr. Neal a *boni fied* sale of the judgment, and the questions you ask cast some reflections upon the sale, and it is for that reason that I feel at some disadvantage.

Q. It is because they cast some reflections that you decline to tell the truth, is it?

A. No, sir; it is because you ask some questions in regard to it which you no doubt have some notion of from your brother-in-law, Mr. Church, and which I don't intend you shall get from me; that is the reason.

Q. Does the fact that I ask you whether that $5,000 was applied on that indebtedness cast a reflection either upon your veracity or upon the *boni fides* of the transaction with Charles A. Neal?

(Objection by Wood as irrelevant, incompetent, and immaterial.)

A. I don't think it does, but I consider the question as only a repetition of the previous question, which I declined to answer put in a different form.

Q. Does the question of the account of your indebtedness to Ladd

& Tilton cast a reflection upon your veracity or upon the *boni fides* of that transaction with Charles A. Neal?

(Same objection by Wood.)

A. I decline to answer.

Q. Can you state any question that I have asked you that in any way reflects upon your veracity or upon the honesty of your intentions in this matter?

(Same objection as above by Wood.)

630 A. I decline to answer.

Q. Then your accusation was without foundation so far as any reflection being cast upon you was concerned?

(Same objection by Wood.)

A. I never said that any reflection was cast upon me or my veracity; nothing of it.

Q. Upon what was any reflections cast by any question that was asked by me?

(Same objection by Wood.)

A. I was not aware that I have stated that there was any reflections cast on me.

Q. You stated in substance that you refused to answer some questions because they reflected upon you or upon the transaction.

A. I stated that I refused to answer those questions unless ordered by Judge Deady to do so, because it is none of your business.

Q. Well, it may be the business of my cliant.

A. Well, if it is, and the court so orders, then I will answer.

Q. Why are you so much interested in this suit as to refuse to answer those questions?

A. Because I don't think the questions pertain to this case at all.

Q. You are the judge and jury, too, are you?

(Objection by Wood as impertinent.)

Q. Has Mr. Neal's attorney suggested to you that you need not answer? Has Mr. Wood, the attorney here, told you that you need not answer these questions?

A. I decline to answer them simply upon my own judgment.

Q. Will you answer my question, whether Mr. Wood, Mr. Neal's attorney, has suggested to you that you need not answer these questions?

(Objection by Wood, same as above.)

631 A. I will state that Mr. Wood has given me no advice upon the subject outside of what he has said before you and the parties present in regard to this matter.

Q. Did not he say in the presence of the master here this forenoon that you need not answer those questions unless you wanted to?

A. He did not advise me not to answer. I think he did say I need not answer unless I wanted to, but he did not advise me not to do so.

Q. You refuse to answer any further questions, do you, upon that?

A. It depends upon what the questions are.

Q. About the indebtedness to Ladd & Tilton and the application of the $5,000 to the payment of the indebtedness of Sibson, Church & Co.?

A. I decline to answer any questions pertaining to our business with Ladd & Tilton.

Sibson X.

Cross-examination by WOOD:

Q. Mr. Sibson, in the letters and order you have testified to recently in your direct examination was there any other correspondence that passed between you and Mr. Foster relative to that order and intended to explain it that you have in your possession?

A. There is.

Q. Will you produce it?

A. Yes; here it is now.

(The correspondence here produced is offered in evidence for complainant, copies are made by the master and marked "Complainant's Exhibits N. & O" respectively.)

Q. On the balance-sheet exhibited to you and marked "Defendants' Exhibit 2" it appears a debit of some $13,000, whereas it is claimed that at the time Foster sold to Crawford there was actually
632 due you from Foster only some $6,000, in round numbers about that against Mr. Foster, and the judgment upon which this suit is brought is some $13,000 or $14,000, if I recollect. Can you explain the increase in the debt against Mr. Foster?

A. Yes, sir.

Q. Please do so.

A. The balance spoken of was, on January 24th, 1884, $6,000.61, due us by Foster on that date on open account. In addition to that balance there were several shipments of his flour on the way to Liverpool, on which we had made advances to Foster. The shipments were on board the barks Afton, City of Madrid, and Genett McNeal. After the arrival of the flour at Liverpool and the sale of the same we were able to make up a complete statement of the account and the difference between the balance on January 24th, above mentioned, and the amount for which we obtained judgment was made up by the loss incurred on the shipments by the above-named vessels, together with the interest on the account as shown in the statement rendered April 15th, 1885, and marked Exhibit "2."

Q. Can you state about what time—approximate the time when you were in a condition to know the exact status of J. H. Foster's account with you?

A. We were not in a position to tell until the account mentioned, marked Exhibit "2," was made out and rendered to Mr. Foster, the reason being that the shipments of flour by the above-named vessels were sold after arriving at Liverpool, and the consumption of the

time used by the Liverpool agents making up final accounts of sales and shipments was the cause of the delay.

Q. When were the advances made out of which this indebtedness arose?

A. They were really made prior to the 24th of January, 1884.

633 Q. Was this assignment which you made to Neal of the judgment an assignment of your entire interest or was it in secret trust for your benefit or has Neal any secret trust for your benefit? I mean have you parted with your entire interest in it?

A. We have. There was no secret trust or qualification about it.

Redirect.

Redirect examination by FLINN:

Q. Did the loss on the flour that you received from the Bank of British Columbia make a part of that $13,000 on the balance-sheet?

A. Yes; the loss on that 10,000 sacks of flour referred to was $1,857.93, which is included in the amount for which we obtained judgment.

Q. Was that the total loss on that 10,000 sacks, including all that you paid out for freight and insurance, as well as the advances made on the lot?

A. Yes; my recollection is that that is the total loss.

Q. On which of those barks was that shipped?

A. On the Jennet McNeal.

Q. You had not paid those advances on the 24th of January to the Bank of British Columbia, had you?

A. No, sir.

Q. You had not shipped the flour at that time?

A. No, sir.

Q. Was there any flour shipped on the Jennet McNeal that you got of Foster besides the 10,000 sacks?

A. No, sir.

Q. Was the loss greater on the other 20,000 sacks that you shipped for him on those three vessels than on the 10,000 you shipped on the Jennet McNeal?

A. The loss was greater by the Afton because the advances that we made to him were greater, the market having declined afterward,

634 of which we notified Foster previous to January 24th by letter and on which we requested him to pay us back part of the advances made, the markets having declined.

Q. Was the flour on those three barks sold for about the same price?

A. My recollection is that it was for about the same price.

Recross.

Recross-examination by WOOD:

Q. Was the advancements made on the 10,000 sacks from the Bank of British Columbia paid by you prior to the sale by Foster to Crawford?

A. I gave the date. I desire to make a statement. Counsel asked me some time ago whether we were under any obligation to pay the Bank of British Columbia the advances against that 10,000 sacks of flour or whether the correspondence which has been exhibited showed any such obligation on our part. In reply I informed him that the correspondence exhibited did not show that we were obligated to make that advancement, and I wish to say now that I can produce correspondence prior to the date mentioned, prior to the dates of the correspondence which has been exhibited, whereby we were obligated to make that advancement to Foster on the 10,000 sacks of flour.

Well, in Defendants' Exhibit "29," dated January 14th, Mr. Foster——

(Here witness reads Ex. "29" in explanation.)

Q. Has this letter reference to the 10,000 sacks of flour with the Bank of British Columbia?

A. It refers to the same lot for which we had engaged freight room for Foster.

Q. Did you make the advances requested in this letter?

A. No; Mr. Foster wanted four dollars a barrel advanced and we declined to make so much advancement owing to the state of the market.

635 Q. Well, did you make any advancement?

A. Yes; we repaid the amount to the Bank of British Columbia which they had advanced to Mr. Foster on the flour.

Q. How near to the date of that letter did you pay the advancement?

A. We paid the advancement on February 11th.

Q. What ship did that go on?

A. The Jennet McNeal.

Q. What flour went in the Beama that you have referred to in this correspondence?

A. The Jennet McNeal went as a substitute for the Beama, as the correspondence shows.

Q. If you have any other correspondence which will throw any light on this transaction between you and Foster and the Bank of British Columbia with reference to the 10,000 sacks of flour or whatever amount it was will you produce it?

A. Yes, sir.

Q. Can you do so now?

A. Yes, sir; it appears in these exhibits marked "N" & "O" and in "30."

Q. Then you did not understand the question before. Was there anything in the exhibits of this correspondence that shows an obligation on your part to repay the Bank of British Columbia, for Foster's account, the advances they had made to him on this flour?

(Objection by Fliun, as the exhibits themselves are the best evidence of what they show.)

Q. What of all of the exhibits, one or more of them, show the obligation you were under to pay the Bank of British Columbia those advances which they made to Foster?

(Objection by Flinn, same as above.)

A. Well, I will say that exhibits marked "N," "O," and "26, 27, 30, and 31" all specifically show that we were under obligations to furnish freight-room and make advances against this 10,000 sacks of flour to Mr. Foster.

636 Q. Did this order of January 17th, or Exhibit "26," require an order from him to the bank for the flour?

A. Yes, sir.

Q. Did the substitution of the Jennet McNeal for the Beama receive the assent of Foster & Co.?

A. Yes, sir.

Re-redirect.

Re-redirect examination by FLINN:

Q. When did the Beama sail from Portland?

A. I can't say. She sailed about the time she was loaded.

Q. Was the Jennet McNeal here in Portland on the 17th of January, when that order was given?

A. I can't say; I don't remember, but I think probably she was.

Q. How long does it usually take a vessel to load here?

A. Well, they usually have thirty days to load—thirty working or lay days, exclusive of Sunday.

WM. S. SIBSON.

E. Quackenbush.

E. QUACKENBUSH called and sworn on behalf of defendants.

Q. by FLINN:

Q. State your name, age, residence, and occupation.

A. E. Quackenbush; aged 47; residence, Portland; occupation, shipping commission merchant, with Sibson, Quackenbush & Co.

Q. Are you one of the firm of Sibson, Quackenbush & Co.?

A. Yes, sir.

Q. And were you one of the firm of Sibson, Church & Co.?

A. I was.

Q. You may state whether you signed that paper marked "Exhibit A."

A. I did.

Q. What was the consideration of that?

A. As expressed in the paper, one dollar and $5,000 in a note.

Q. Is that expressed in the paper?

A. I said, As expressed in the paper, "one dollar" and an additional $5,000 in a note.

637 Q. Who was present besides the parties whose names are attached, if any one?

A. I know of no one.

Q. Was William M. Ladd present?
A. He was not.
Q. Where was he?

(Objection by Wood as irrelevant, incompetent.)

A. I don't know.
Q. Were you present when the contract was made on Neal's behalf?
A. I was not.
Q. Did you know anything about it of your own knowledge, only as explained by Mr. Sibson?
A. As I understood it, Mr. Sibson made the contract on behalf of our firm with Mr. Ladd.
Q. And you signed it on his statement of the matter?
A. I did.
Q. Mr. Ladd was not present when you signed it at that time?
A. He was not.
Q. Was Mr. Farrel present when you signed it?
A. I think not, although I am not clear upon that.
Q. Do you know what losses the Portland Flouring Mills Co. made that year?

(Objection by Wood, same as above.)

A. I do not.
Q. Have you any personal knowledge of the losses that Sibson, Church & Co. sustained upon that 10,000 sacks of flour that they got from the Bank of British Columbia on Foster's account?

(Same objection.)

A. I don't remember. I probably knew at the time, but I don't recall it. I am not directly connected with the books of the firm.
Q. Do Sibson, Church & Co. still owe Ladd & Tilton's bank?

(Same objection as above by Wood.)

A. They do.
Q. To what amount?

(Objection by Wood, same as above.)

A. Well, I don't know. It varies from time to time.
638 Q. I have reference to Sibson, Church & Co., not Sibson, Quackenbush & Co. You probably misunderstood the question.
A. I don't remember. That varies, too, from time to time.
Q. How much did Sibson, Church & Co. owe Ladd & Tilton's bank at the time of Foster's failure?

(Objection same as above by Wood.)

A. I don't remember the amount.
Q. Can you approximate it?
A. I cannot.

Q. Can you approximate it within a $100,000?

(Same objection.)

A. I can't; I would like to explain. We sometimes have four or five ships unsettled for and considerable amounts of advancements in the country on wheat purchased, and sometimes two or three vessels in a single day. and therefore there is a great fluctuation in the accounts.

Q. Did Sibson, Church & Co. ever have a settlement with the bank of Ladd & Tilton?

(Same objection as above by Wood.)

A. No final settlement.

Q. Were the accounts of Sibson, Church & Co. kept separate from those of Sibson, Quackenbush & Co., or were they all run together?

(Objection by Wood, same as above.)

A. Kept separate.

Q. In other words, were new books or new accounts opened when Charley Church went out of the firm of Sibson, Church & Co.?

(Objection by Wood, same as above.)

A. They were.

Q. Is it not true that Sibson, Church & Co. still owe the bank of Ladd & Tilton over $200,000 for the business done in 1883 & '84?

(Same objection as above by Wood.)

A. I don't know how much.

Q. Will your books show?

A. I presume so.

Q. They are here; refer to them.

639 A. I am not sufficiently acquainted with them to enter into details.

Q. Turn to the account of Ladd & Tilton. Can you do that?

(Objection by Wood, same as above.)

Q. In your judgment, how much did Sibson, Church & Co. owe the bank of Ladd & Tilton on or about the time of the transfer by Foster to Crawford?

(Same objection as above by Wood.)

A. I can't give even an approximation.

Q. Was it as much as $100,000?

(Objection by Wood, same as above.)

A. Oh, it was undoubtedly more.

Q. Do they still owe the bank for the business of that year as much as $100,000?

(Same objection as above by Wood.)

A. I think they do.

Q. Is there any understanding on your part that Sibson, Quackenbush, or Sibson, Church & Co. would receive any benefit from the result of this suit if it should be favorable to Charles A. Neal?

A. There was no understanding whatever.

Cross-Ex.

Cross-examination by WOOD:

Q. Mr. Quackenbush, was your connection with the firm of Sibson, Church & Co. an active one?

A. Not in the general business; in the insurance department it was.

Q. What branch of the business of Sibson, Quackenbush have you in charge?

A. Insurance, directly.

Q. You are not personally and from memory fully posted with all of the details of the business?

A. No; I am not.

Q. Have you charge of the general books of the firm?

A. I have not.

Q. Is it not true that you are often absent on business for the firm?

640 A. Not often, but at considerable length of time when I am absent.

Q. You stated that you, on behalf of that firm, executed the assignment of the judgment to Charles A. Neal, did you not?

A. I did.

Q. Was that an assignment in good faith, transferring all of that firm's interest to Neal without any reservation?

A. It was.

Q. The note that you spoke of as being the other part of the consideration, has that been paid?

A. I don't personally know.

E. QUACKENBUSH.

Thomas F. Osborn.

THOMAS F. OSBORN called and sworn on behalf of defendants.

Questions by FLINN:

Q. State your name, age, residence, and occupation.

A. Thomas F. Osborn; aged 38; residence, Portland, Oregon; occupation, bag manufacturer.

Q. Are you one of the firm of W. C. Noon & Co.?

A. I; yes, sir.

(Here the original paper of which a copy is in evidence marked Exhibit "B" is shown to witness.)

Q. Did you sign that paper as one of the parties thereto?

A. Yes, sir.

Q. To whom was it delivered after it was signed?

A. It was delivered to William M. Ladd.

Q. Who made the contract for the sale of the judgment mentioned in it?

A. I did.

Q. What did he pay the firm of W. C. Noon & Co. for that judgment?

A. He paid one dollar and also a note of Mr. Noon's for $500.

Q. Do you know Charles A. Neal?

A. No, sir.

Q. Do you know whether there is any such person at all?

A. Yes, sir; I do.

Q. How do you know?

A. Well, I don't know of my own personal knowledge, but
641 I am told by persons who do know him.

Q. I am asking for your own knowledge.

A. Well, of my own knowledge I don't know.

Q. You say he paid you one dollar and a note for $500 signed by Charles A. Neal?

A. Yes, sir.

Q. Mr. Ladd represented himself as attorney for Charles A. Neal?

A. Yes, sir.

Q. When was the note payable?

A. One day after date.

Q. When was it paid?

A. It was paid at the time we took it.

Q. Who paid it?

A. Ladd & Tilton.

Q. You endorsed it and put it in the bank?

A. Yes, sir.

Q. William M. Ladd is a son of Ladd, of the firm of Ladd & Tilton?

A. Yes, sir.

Q. What position does he hold?

A. I don't know, I think he is one of the firm, but I don't know his position.

Q. Who was present at the time you made the contract with Mr. Ladd to sell him that judgment?

(Objection by Wood as immaterial.)

A. Mr. Wilcox and my partner, Mr. Noon, and a witness, Mr. Armstrong.

Q. Did you make the contract when you signed the note or had you made the agreement before?

A. No; we made it before.

Q. Who was present?

(Objection by Wood as immaterial and irrelevant.)

A. I don't think any one else was present at the time we made the agreement to sell.

Q. Did he ask you if you would sell?

A. Yes, sir.

Q. What price did you put on it at first?

(Same objection by Wood.)

A. I did not put any price upon it.

642 Q. He just offered you so much?

A. Offered me so much and I sold it.

Q. You had no idea of it when you went there?

A. He just offered me so much and I sold it.

Q. You did not think it was worth much, did you?

(Objection by Wood, same as above.)

A. Well, no; it had been a kind of fight with us and upon the fight I did not consider it worth much.

Q. Was there any understanding at the time you made that agreement with Mr. Ladd that there would be a suit brought in the U. S. court upon that?

A. No, sir.

Q. Any condition upon it at all?

A. No, sir.

Q. Have you any interest in this litigation at the present time?

A. No, sir; I have not.

Q. Are you to refund the $500 in case Charles A. Neal should lose the suit?

A. No, sir; there is no understanding whatever.

Q. You don't have any interest in the suit, then, whichever way it goes?

A. I don't care; we have sold the claim.

Q. You sold it to Mr. Ladd at his request?

A. It was not requested; he just asked if we would sell it and we told him we would.

Q. What was the price?

A. As I stated before, nothing; we just took his price.

Q. You just took his price?

A. Just took his price.

T. F. OSBORN.

643 *W. M. Ladd.*

WILLIAM M. LADD called and sworn on behalf of defendants.

Questions by FLINN:

Q. State your name, age, residence, and occupation.

A. William M. Ladd; aged 31; residence, Portland; I am a banker.

Q. Are you one of the firm of Ladd & Tilton?

A. Yes, sir.

Q. Are you acquainted with Charles A. Neal?

A. Yes, sir.

Q. When did you last see him?

A. When he was out here this summer. I don't know whether it was July or August or June. I guess it was in August.

Q. Where does he reside?

A. Chicago.

Q. Is he a relative of yours?
A. Yes, sir.
Q. What?
A. A cousin.
Q. In this case it is claimed by one of the witnesses that you were his attorney-in-fact; how is that?
A. I am.
Q. To do what?

(Objection by Wood as immaterial, irrelevant, and incompetent.)

A. I don't know, sir; whatever he may want done, I guess.
Q. To do what, in relation to what business?
A. I have the power of attorney; you can see for yourself.

(Here the witness produces a power of attorney and the referee is requested to make a copy thereof to be used as evidence for defendants in this case.)
(Objection by Wood as immaterial, irrelevant, and incompetent.)
(The copy is made and received in evidence and marked "Defendants' Exhibit 32.")

Q. You may examine Exhibits "A" & "B," which you hold in your hand, and state whether you purchased the judgments mentioned therein under that power of attorney.
A. I don't know whether I did or not.
644 Q. You can't say?
A. No, sir; I never saw this paper before that I know or remember of.

(Here the original papers of which the aforesaid exhibits are copies are shown to witness.)

Q. Examine those carefully and state whether you have ever seen them.

(Objection by Wood as immaterial, irrelevant, and incompetent.)

A. Well, I don't recollect of ever seeing them; I may have seen them, but I have no recollection of it.
Q. Have you any recollection of making the purchases therein mentioned for Mr. Charles A. Neal?
A. I signed a couple of notes for Charles A. Neal, which Mr. Wilcox brought to me, that had something to do with the Foster judgment or Crawford judgment, or something of that kind.
Q. What was it?
A. I don't know anything about it any more than that it was something—perhaps you will understand my position if I explain just how it happened. Mr. Wilcox has charge of our mill business; that is the business which Mr. Neal owns; he is the principal stockholder in the Portland mill and my father and myself are the others, and I think possibly himself and I don't know who else. I can't at this time recall who they are. Mr. Wilcox manages the business and also, in connection with Averill, manages the Sibson, Church & Co. liquidation business, so far as we have anything to

do with it and the mill. Sibson, Church & Co. were formerly agents of the old mills and Sibson, Quackenbush are the agents of the new corporation, and Mr. Wilcox looks after that. He is the manager of it; he brought two notes to me to sign for Neal,
645 and, if I remember rightly, I don't recall what was said. I don't know whether he made much of an explanation or not. The fact is I did not know it was a judgment or what it was that I bought for Neal. These matters in connection with the Sibson business and the mill business are left entirely to him, Wilcox, and he said, "This is all right and I signed it"—that is, he might have said those words, but I signed it just as I have signed a hundred other things.

Q. Did you have any talk with Mr. T. F. Osborn about purchasing the judgment of W. C. Noon & Co. on behalf of Charles A. Neal?

(Objection by Wood, same as last above.)

A. I don't remember, sir; circumstances might be brought up to remind me of it, but at present I don't remember, and the same with those papers.

Q. What date did you make the contract to purchase the judgment of Sibson, Quackenbush against Foster, if you made any at all?

(Same objection as above by Wood.)

A. I have answered the question so far as I know of it. It was done through my agent, Mr. Wilcox.

Q. I am asking what you did about it.

A. I don't know that I spoke to any one about it. It is usual now, for instance, a man comes in to sell wheat or buy wheat; I have nothing to do about that; it is all turned over to Mr. Wilcox; he has charge of it.

Q. Did you talk at all with Osborn?

A. I don't know, sir; if I did I have forgotten it.

Q. He has testified that he went into the bank of Ladd & Tilton and that you made him an offer for the judgment voluntarily.

A. I have no recollection of it.

Q. Did you ever tell him that you were attorney-in-fact for C. A. Neal?

A. I have no recollection.

646 Q. Did you ever tell Mr. Sibson that you were attorney-in-fact for Charles A. Neal?

A. Well, he must have known it at the time when the first Portland mill was sold to Mr. Neal, because he, Sibson, was then a director in that company.

Q. Did you personally make any contract at all with Mr. Sibson or have any talk with him about purchasing the judgment mentioned in Exhibit "A" that you hold in your hand?

A. Not that I can recollect, sir.

Q. And did you ever see Exhibit "A" before it was shown to you here on the stand, to your knowledge?

(Objection by Wood, same as above.)

A. Not to my recollection. I have no recollection about seeing it.

Q. Did you instruct Mr. Wilcox, whom you say acted as your agent in some things, to make that purchase mentioned in Exhibit "A" from Sibson, Quackenbush & Co.?

A. Yes; if the fact that I signed the note was authority, and if I told him at that time about it.

Q. Have you any recollection now, Mr. Ladd, of giving him any instructions about purchasing that judgment? If you have, please state what those instructions were.

(Objection by Wood, same as above.)

A. No, sir; I don't recollect.

Q. Have you any recollection of instructing your agent, Mr. Wilcox, to purchase the judgment mentioned in Exhibit "B" from W. C. Noon & Co.?

(Objection by Wood, same as above.)

A. I have no recollection.

Q. As a matter of fact, has Charles A. Neal any property here of his own, and does not he hold what is in his name in trust?

A. I object to answering that question, sir.

647 Q. I have reference to so far as this case is concerned. I don't ask for anything outside, Mr. Ladd.

A. I don't understand your question.

Q. Does Charles A. Neal, if he owns the judgment mentioned in Exhibits "A" & "B," hold them in trust for any other person?

(Objection by Wood as immaterial, irrelevant, and incompetent, and as having been already answered.)

A. Not to my knowledge.

Q. Do you know who does own those judgments, of your own knowledge, as a matter of fact?

A. Neal gave his note, or I gave his note for them. You will have to ask Mr. Wilcox about it, because he runs the business. I don't know anything more about what he has got on the flour-mills books than you do.

Q. I am not asking about the flouring mills, I am asking about these judgments mentioned in Exhibits "A" & "B," which you hold in your hand.

A. My answer stands.

Q. Did Mr. Neal's money pay for those judgments?

(Objection by Wood to going into this any further; that witness has already stated.)

A. I don't know anything about it. I have told you all I know, and if you want to get at the facts you must ask Mr. Wilcox. It is all a waste of time.

Q. Did you have any money of Neal's, as his attorney, in your hands at the time of the transfer of those judgments which you hold in your hand—that is, as mentioned in Exhibits "A" & "B"?

(Objection by Wood, same as above, and asks for a ruling by the master, which he declines to do at the present time, and the witness is requested to answer.)

648 A. I should have to ask Mr. Wilcox. There may be money to his credit in the bank. I don't know, because it is not once a year that I look at the account.

Q. Do you know whether the bank cashed the notes that you signed Neal's name to?

(Objection by Wood as immaterial.)

A. No, sir.

Q. You don't know much about the transaction one way or the other?

A. No, sir.

Cross-Ex.

Cross-examination by WOOD:

Q. Mr. Ladd, as a matter of fact do you have anything to do with the details of Charles A. Neal's business here in Oregon?

A. No, sir.

Q. Don't you simply have a power of attorney with power of substitution and revocation?

(Objection by Flinn because the power of attorney is the best evidence.)

A. I believe that is what the power of attorney says.

Q. As a matter of fact, haven't you selected an agent under your authority here and intrusted him with the entire management of Charles A. Neal's business?

(Objection by Flinn as immaterial, irrelevant, and incompetent.)

A. Yes, sir.

Q. Is not that agent Mr. Wilcox?

A. It is Mr. T. B. Wilcox.

Q. As a matter of fact, Mr. Ladd, if I can refresh your memory, on or about the 11th day of June—last summer some time—did not Mr. Wilcox come to you and admit—it was after this was executed, some time along in the summer—and mentioned the fact that

649 he had bought these judgments herein referred to and you ratified them? Have you any recollection about that?

A. No; I have no recollection about that except that Wilcox came and made a certain explanation, and upon that explanation I signed whatever I did sign at that time. I think there was one note or two notes. There might have been more; I don't know.

Q. But since the commencement of this suit the matter has been brought to your attention, has it not? Recently, I mean.

A. What matter?

Q. Well, this is what I mean: Have you not at one time ratified and approved of Wilcox's action in this matter?

A. I approved and ratified his action when I signed the note—when I gave the notes.

Q. Did you not, at the time that you put Wilcox in charge of this business, invest him with full power in the matter of Neal's business?

A. Yes; when I made him the manager and placed my trust in the man.

Redirect.

Redirect examination by FLINN:

Q. He was the manager of the milling business. Was it not the company's business?

A. Yes; you may call it that. Neal was the largest stockholder of the company. Yes; he is the agent for the milling business.

Q. Of yours and Neal's too? Has Mr. Neal any business outside of his interest in the milling business here in Oregon for which you made Mr. Wilcox the agent?

(Objection by Wood as immaterial, irrelevant, and incompetent.)

A. I decline to answer that question, sir.

650 (Here the master is asked to rule on the question and rules that the witness shall answer any question touching that business.)

Q. Do you know of any business that Mr. Neal has outside of the milling business? I am not asking for what it is. I mean in this suit.

(Objection by Wood, same as last above.)

A. I decline to answer unless I am compelled to.

(The master rules that witness must answer the question. Counsel Wood excepts to the ruling of the master.)

Q. Have you at any time given Mr. Wilcox a power of attorney to act for you in behalf of Charles A. Neal?

(Objection by Wood as irrelevant, incompetent, and immaterial if counsel is asking in reference to an instrument in writing.)

A. What do you mean by a power of attorney?

Q. Do you understand what a power of attorney is, Mr. Ladd?

A. I think I do. I want to know what you mean by it?

Q. I asked you if you gave any power of attorney to Mr. Wilcox, substituting him to act for Charles A. Neal.

(Objection by Wood, same as above.)

A. Do you mean a written power of attorney I ask you?

Q. I ask you for written. No others, as I understand it.

A. I never gave him a written power of attorney.

Q. Did you give him any power of attorney?

(Objection by Wood, same as above.)

A. Not if it is what you are driving at—what I think you are driving at.

Q. Did you give him any writing whatever signed by you to act for Charles A. Neal?

651 (Objection by Wood, same as above.)

A. I can't recollect, sir. I should have to see. I have no recollection of it.

Q. Did Mr. Wilcox ever show you those exhibits marked "A & B," which you now hold in your hands?

A. I have no recollection, sir. You asked me that before. I have no recollection about ever seeing these before in anybody's possession until I came here, although I may have seen them before.

Q. How old a man is Charles A. Neal?

Objection by Wood, same as above.

A. I don't know.

Q. How old would you take him to be? You saw him last summer.

(Objection by Wood, same as above.)

A. I think he must be about the same age as my brother Charley—about 29, I think—somewhere along there.

Here court adjourned until to-morrow morning at nine o'clock.

DECEMBER —.

Court convened at the hour appointed and the case proceeded.

Counsel Wood appearing for complainant and Flinn for defendants.

After the examination of several witnesses in the forenoon WILLIAM M. LADD was recalled and redirect examination continued by FLINN:

Q. State, if you know, who directed this suit to be commenced.

(Objection by Wood to all matters relating to the assignment as incompetent, irrelevant, and immaterial.)

A. I don't know.

Q. Did you as attorney-in-fact for Charles A. Neal?

A. Not that I know of, unless through Mr. Wilcox. I don't know what the title of this suit is.

652 Q. This is a suit by Charles A. Neal as an owner of two judgments which he claims to have purchased of W. C. Noon & Co. and Sibson, Quackenbush & Co. to set aside some conveyances that James H. Foster made to John A. Crawford, William Crawford, and Ashby Pearce, of some land and other property in and about Albany; did you as the attorney of Charles A. Neal order this suit to be commenced?

A. I don't recollect; I may have signed some papers for him in the suit; I have no recollection about it; I may have talked with Mr. Wilcox at the time I signed the notes in relation to it, but I don't remember at present anything about it.

Q. Did you employ as his attorneys Williams, Ach & Wood to commence this suit?

A. I don't think it; I don't remember of speaking to Mr. Wood in relation to it before these notes were signed; it is my impression that I had some talk with Mr. Wilcox or Mr. Wood in relation to it some way—that is, I knew that there was some kind of suit going on, but what the title of the suit was I did not know, because, as I said before, I had left that business to Mr. Wilcox.

Q. Did you ever notify Charles A. Neal that you had purchased those judgments for him?

A. No, sir.

Q. Did you ever notify him that the suit was commenced in his name based on these judgments to set aside the conveyances which I have mentioned?

A. No, sir.

Ladd Recross.

Recross-examination by WOOD:

Q. Was it not understood between you and Mr. Neal when he gave you that power of attorney referred to that he consigned his entire interests in Oregon to your care, subject wholly to your discretion?

(Objection by Flinn because the power of attorney itself is
653 the best evidence as to the authority conferred on the witness.)

A. Yes, sir.

Q. Did you not, then, as to the Portland Flouring Mills Co. and all of Neal's interests collateral thereto, make Mr. Wilcox your fully authorized agent in Neal's behalf?

(Objection by Flinn, same as above and also as incompetent, irrelevant, and immaterial.)

A. Yes, sir.

Q. Is Charles A. Neal able to meet those notes or any other obligation that you have incurred on his behalf financially?

A. Yes, sir.

Re-redirect Ladd.

Re-redirect examination by FLINN:

Q. Has he paid those notes that you signed for him in fact?

A. I believe he has, sir; that is my impression.

Q. Did you pay them for him?

A. Not personally.

Q. Did he pay them personally?

A. If they are paid, they must have been paid through Mr. Wilcox.

Q. You don't know, then, whether they are paid or not, do you, of your own knowledge?

A. No, sir.

WM. M. LADD.

John McCracken.

Col. JOHN MCCRACKEN called and sworn on behalf of defendants.

Questions by FLINN:

Q. State your name, age, residence, and occupation.

A. John McCracken; aged 60; residence, Portland; occupation, merchant.

Q. Are you acquainted with James H. Foster, of Albany?

A. Yes, sir.

Q. You may state whether you had a conversation with him about the first of February, 1884, concerning his borrowing money here in Portland; and, if so, you may state what he did, and what

654 you did towards borrowing money at that time for him?

A. Mr. Foster came to our office about that time and told me that he wanted to borrow $10,000, and offered as security property in Albany, his store and so on, and gave me a little estimate of his rents and the income from the property; and I went to see Mr. Rodgers and told him what I knew of the security and what Mr. Foster had said about the income, and it more than paid the interest on the amount desired. Mr. Rodgers told me that on account of the mortgage tax law the company was drawing in their money here and he could not make a loan; and I told Mr. Foster the result of my interview with Mr. Rodgers and we talked of money matters generally, as Mr. Foster and I frequently did, as he had done a good deal of business with my firm. I asked him if he had asked Mr. Crawford for money; mention the reason of my asking him was this: he had told me a number of times previous to this that he had got money from Mr. Crawford when he needed it. His reply was that he had not asked Mr. Crawford for money; that he was owing Mr. Crawford a good deal at the time; and that was about the substance of our conversation at the time of my conversation with Mr. Foster.

Q. Who was this Mr. Rodgers you speak of?

A. Mr. Rodgers was the manager of the Dundee Mortgage Savings Company in this city.

Q. State whether or not you went to see him at Mr. Foster's request.

A. No, sir; I went to see him at Mr. Foster's request for me to obtain the money; and I think I went to see the manager of the London & San Francisco Co., but I can't say positive about that, but my impression is that I went over there to see him.

655 Q. You may state if you went with Mr. Foster to any other place where he might obtain money, if you recollect.

A. I think we spoke of the Bank of British Columbia, but of that I am not certain; he had obtained money on one or two occasions

from the Bank of British Columbia and I had negotiated the matter for him.

Q. You may state whether you are acquainted with John A. Crawford.

A. I am.

Q. You may state whether you saw him in Portland a few days after you had this conversation with Foster.

A. I saw him a few days after this talk with Mr. Foster and I was speaking to him about the difficulty of obtaining money on real-estate security, and referred incidentally to this matter of Mr. Foster's supposing that Mr. Crawford knew it; Mr. Crawford said very little, but left the office very soon after.

Q. Please repeat your language to Mr. Crawford on the subject of Mr. Foster's wanting to get money, as near as you can.

A. Stating as near as I can remember, I mentioned the circumstance of having been to Mr. Rodgers to obtain money for Foster upon this security and spoke of his security as being ample because the income, as Mr. Foster had told me, was more than sufficient to secure the interest, and yet with such security as that Mr. Foster was unable to obtain the loan; this was brought about incidentally in talking.

Q. What remark did Mr. Crawford make in reply to your information that Foster wanted to borrow money on a mortgage?

A. He simply asked the question at the time, "Does Foster want money?" And I said yes, he wanted $10,000; and in a very few minutes he left the office; we had very little, if any, conversation after that.

656 Q. How did he appear—surprised or otherwise?

A. Well, he appeared very different. Mr. Crawford and I have been acquainted for thirty years and when he is down he generally drops in and we have a chat, and he got up rather abruptly, I thought, and went out.

McCraken Cross-ex.

Cross-examination by WOOD:

Q. What time was this that Mr. Foster came to you to get the $10,000?

A. I think it was in January, 1884, but I would not be positive as to the precise time, but it was after the first of January I know.

Q. Did he offer any other security besides this brick block?

A. It is possible that he did.

Q. Do you remember what other security he spoke of?

A. It seems to me that he offered other property. I know we talked about the property and the income from it.

Q. Did he offer the Magnolia mills?

A. He said in the course of the conversation, "I can give unincumbered real estate sufficient to make this ample security," and we talked about it as I stated; we talked about the rents. My recollection is that he included the mill or described a portion of property about the mill, but I could not say as to that; I was more

impressed about him not being able to get the money upon that property.

Q. You figured out what the property would come to at the time?

A. Yes; we figured out that the income would more than come to the interest on the money at that time.

Q. Did he say how much he was indebted to Mr. Crawford?

A. He did not. He said, "I am owing Mr. Crawford a good deal now."

Q. Did he mention any other indebtedness?

657 A. He did not. He spoke about other conditions—the money that he wanted at this time was to pay for wheat.

Q. Who was present at the time of the interview between you and Mr. Crawford?

A. It was in the office. The people employed in the office were about.

Q. How long was the interview with Mr. Crawford after the one with Mr. Foster?

A. It was a very few days; I should think it was within a week or ten days at farthest.

Q. Did you try at any other place to get money than at the Dundee and Trust Company and the London and San Francisco bank?

A. I don't think I did; I can't remember of any other place now.

Q. Did Foster try on his own behalf?

A. That I don't know. I think I mentioned to Mr. Foster I spoke of the Bank of British Columbia, and he spoke of a note being there at the time, and he did not think it would be best to apply to Mr. Townsend at the time.

Q. How many interviews did I understand you to say you had with Mr. Foster on the subject?

A. Only the one. When I went out he remained in the office until I returned.

Q. The same people—your employees—were in there at the time?

A. Yes, sir.

Q. And only the one interview with Mr. Crawford?

A. Yes, sir; only the one interview with Mr. Crawford upon that subject.

658 *Redirect.*

Redirect examination by FLINN:

Q. When Mr. Foster stated to you that he wanted the money to buy wheat was anything said about his being short of wheat?

A. No; he said he had some payments to make on wheat. That is the way he put it. He did not say to me whether he was short or whether the wheat was coming in for to buy.

(Signed) JNO. McCRACKEN.

E. J. LANNING called and sworn on behalf of defendants.

Questioned by FLINN:

Q. State your name, age, residence, and occupation.

A. E. J. Lanning; aged 44; residence, Albany, Linn county, Oregon; occupation, merchant miller.

Q. Are you one of the owners and operators of the Red Crown mills in Albany?

A. I am.

Q. How long have you been engaged in the milling business in Albany?

A. Seven years.

Q. Are you acquainted with the Magnolia mills, formerly owned by Jas. H. Foster, now by John A. Crawford?

A. I am.

Q. How long have you known them?

A. About eight years.

Q. You may state whether you rented those mills at any time.

A. Yes; we rented them in October, 1884.

Q. How long and of whom?

A. We rented them of Mr. Crawford and we operated them for about two weeks.

659 Q. With what force; yours or Crawford's?

A. Our own force.

Q. Your own hands?

A. Yes. We employed our own hands.

Q. How did that mill do toward the manufacturing of flour?

A. Well, it did not suit us. We thought the mill would make flour equal to our own brand. We supposed when we rented it that it would make flour equal to what we manufactured and we put on the market as standard brand.

Q. What was the result?

A. We knew nothing to the contrary until the flour was in the hands of consumers and then we commenced to receive complaints as to quality.

Q. To what extent?

A. Well, to the extent of some of our customers quitting us entirely for the time being; also to our competitors in the market, who went into the field and made a big hubbub about it, that we were operating those mills and putting the flour into our bags.

Q. How did it compare with the amount of wheat put into a barrel of flour?

A. We made an estimate of the wheat and we had it weighed at our mill and loaded on cars and shipped up to the Magnolia mills in a load and put to the burs and ground it. The wheat was clean, except it went through the smutter or scourer, but it had to do that in order to get to the bins. The wheat was clean, but there was a loss when we came to weigh up that we could not account for. The yield was considerably less than what our old mill was turning out at the time—that is, it took more pounds of wheat to make

660 a barrel of flour than it did at our mill.

Q. In your judgment, Mr. Lanning, what is the Magnolia mills property, including the warehouse, worth at the present time?

A. Well, sir, at the present time $12,000.

Q. What was it worth on the sixth of February, 1884—at the time Foster sold it to Mr. Crawford?

A. It might have been worth $15,000 at that time, in the condition it was in.

Q. Do you think it has depreciated since?

A. Yes, sir.

Q. For what reason?

A. The mill has stood idle a great deal of the time since, the timbers have decayed, machinery getting rusty, the bolting cloths getting mouldy and they become rotten, and the mill is getting more worthless every day that it lies idle.

Q. Are you acquainted with the brick block known as Foster's block?

A. I know where it is, yes. I have been through it—I guess all parts of it—pretty much every room in it.

Q. Were you acquainted with it in February, 1884?

A. Well, yes.

Q. What was it worth at that time?

Objection by Wood that it is not yet shown that he is competent to testify as to that.

A. I should judge it was worth 14 or $15,000.

Q. Is that the block that you understood that Foster deeded to William Crawford?

A. I understood that it was deeded; just heard it in a kind of way; that is all.

661 Q. That is the block you have reference to?

A. Yes, sir.

Q. What is that worth at the present time?

A. It may be worth $20,000.

Q. What do you know about there being a great, or any, depreciation in the price of breadstuf-s in the fall of 1883 and the winter of 1883 & '4 in Oregon and throughout the Pacific coast?

A. Well, there was a depreciation in breadstuf-s for foreign shipment; there was not much depreciation right here at home. There was a depreciation for foreign shipments on account of freights which were very high, they took a high figure, but the price of grain was high, too, in proportion to the price of flour—what flour would bring. I think we paid about 90 cents a bushel for wheat in December, 1883. Flour in the local market was only bringing about five dollars a barrel, but I understood from parties that had shipped off that flour only brought about $3.50. In fact, I heard of some cases where the advancements had been made against flour at four dollars a barrel, and they had to pay back some fifty cents a barrel; the flour would not bring enough to pay the advancements.

Q. Is it not true that the price of flour here is dependant in the main upon the foreign market?

(Objection by Wood as leading.)

A. Yes, sir; it is.

Cross-examination by WOOD:

Q. Were you running the Red Crown mills in 1884?

A. Yes, sir.

Q. What sort of mills were they—bur- or roller?

662 A. It was roller.

Q. Are you running the same mills now?

A. Yes, sir.

Q. Why did you give up the Magnolia mills?

A. It did not suit us was the object of leaving it.

Q. What is the class and style and make of the machinery in yor mill, the Red Crown?

A. Do you wish the names of the manufacturers?

Q. Yes, sir.

A. Our rollers are manufactured by the Wilford & Northway Manufacturing Co. of Minneapolis—six sets of them; three sets are manufactured by E. P. Allison — Co., of Milwaukee, known as the gray roller.

Q. What is the make of the roller part of the Magnolia mills?

A. I think there is one set of rollers of Stiffin's roller, and *the* there are two or three sets of the gray roller manufactured by E. P. Allison & Co., two or three.

Q. Did you use the rollers in the Magnolia mill? You spoke of putting the wheat to the burs.

A. The rollers, we did use them, yes; but the Magnolia mills, if you wish me to explain, is what was called a combination mill, and the wheat first goes to the burs and is broken there—part of it; the middlings go to the rollers and part of it comes from the burs in flour.

Q. And your mill is called a roller mill, is it not, exclusively?

A. Yes; it was not at the time we were using the Magnolia a full roller mill; it was then very similar to the Magnolia mill; we used burs also at that time.

663 Q. Now, a load of wheat is cleaned for the burs and then weighed, is it, as I understand it?

A. The wheat is cleaned and run through a smutter and goes from there to the stock bin, out of the stock bin to the burs.

Q. And out of the stock bins it is weighed?

A. Sometimes it is; we weigh our wheat into the stock bin; as it goes into the stock bin it is weighed.

Q. Did you weigh the wheat from the stock bin in the Magnolia mills at the time you had them?

A. No, sir.

Q. Well, how do you know, then, that it took more wheat to make a barrel of flour in the Magnolia mills than in yours?

A. We knew it from the results—from the amount of flour we got from the amount of wheat we ground.

Q. Is not that only one end of your scale; to know the amount of flour you got must you not know the amount of wheat you use to make the flour?

A. Yes; but we do know that to a pound; we weighed the wheat into the cars and took it up there and ground it up.

Q. Did not you just say you did not weigh it?

A. You did not ask me that; you asked me if we weighed it out into the stock hopper.

Q. Then was it weighed down at your mill and then sent up there?

A. Yes, sir.

Q. And from the cars to the stock hopper it went all cleaned?

A. Yes, sir; from the car to the stock hopper it was already cleaned.

Q. And you say that the dribbings were all cleaned up?

A. Yes, sir; all cleaned up.

Q. Did you weigh the middlings, the bran, and the entire product?

A. Yes; everything we could find.

664 Q. And there was a loss in wheat?

A. There was a loss somewhere that we could not account for.

Q. What proportion was the loss—how great?

A. Well, it would amount to—it took about eight pounds more of wheat to make a barrel of flour than at our mill.

Q. And you can't account for this loss?

A. No, sir.

Q. You are sure there was no visible waste?

A. There could not be. We cleaned up the dust-room and everything—everything was taken into account.

Q. How did the Magnolia mills, in 1884, compare with the generality of mills throughout the country?

A. There are a great many mills of that class throughout the country, but they are not what are termed standard mills—that is, they don't make a brand of flour that goes on the market as standard flour—don't bring so much money by two bits a barrel.

Q. Did the Magnolia make a standard brand?

A. They claimed to do it, and yet the flour did not bring as much in this market as ours did.

Q. By how much?

A. I think it was 25 cents a barrel.

Q. Did the two mills use the same grade of wheat?

A. Yes, sir.

Q. What was the expense of running the Magnolia mills as compared to the Red Crown?

A. They were very near the same. We did not run them to the full capacity quite—that is, we did not run them night and day.

Q. If you had run the Magnolia mill night and day the proportional expense would have been less for the time, would it not?

A. Well, I can't say as to that. Our own mills we considered that we were operating pretty cheap.

665 Q. But I say what was the comparative expense of running the two mills at that time?

A. Well, I could not say; I never figured on that exactly. I think it would cost us a little more to manufacture a barrel at the Magnolia mill; we had to send men there.

Q. Do the Magnolia mills have any advantage in the way of water power?

A. No, sir; not that I know of. Our water rent costs us $600 a year.

Q. You run the Magnolia mills about two weeks?

A. Yes, sir.

Q. When did you make your data for the amount of wheat it took to make a barrel of flour and the general cost of a barrel of flour turned out at the Magnolia mills; at the time you first took charge or after you had given up the mill?

A. After we had given up the mill, of course. We could not make any until after we had reduced the wheat into flour and found out what the average was.

Q. What is the rent of those brick stores you spoke of?

A. I don't know.

Q. What was the rent in 1884?

A. I don't know.

Q. You don't know, then, what its market value is except as a guess, do you?

A. Well, judging as to what property is worth along the street there that has changed hands within the last few months.

Q. Do you know of your own knowledge what price it has brought?

A. No, sir; I don't.

Q. You did not ship any flour that you made to a foreign market, but the flour you made was for home consumption?

A. We did not ship any ourselves. We sold some for for-
666 eign market. It was principally for home consumption.

Q. Did I understand you that at the time that you operated the mills—the Red Crown and the Magnolia mills—that they were substantially the same sort of mill?

A. Yes, sir; they were substantially.

Q. Did I understand you that the wheat went through a smutter at the Magnolia mills?

A. I think it did.

Q. Did you give up the Magnolia mills because of the dissatisfaction expressed by your trade, or because you thought it would be impossible to make a profit by manufacturing wheat into flour with it?

A. Well, we thought we would ground up a certain amount of wheat and then figure up and ascertain whether it was profitable for us to operate it or not.

Q. What I want to know is, whether your calculation that it would not pay you, whether you were led to that opinion by the complaints of your customers and the assault made by your competitors, or whether it was because the amount of flour turned out by it was not enough for the amount of wheat you ground in it; suppose the quality of flour turned out by the Magnolia mill had been just as good as that from your own would there have been a fair profit on the Magnolia flour—was it not quite possible for you to make a profit?

A. I don't think there was for the foreign trade, nor for the home trade either, unless it was already built up and established.

Q. How does the quality of flour that you make at the Red Crown mill—how did it compare with other brands as to quality and standard throughout your locality or throughout Oregon as far as you know?

A. It is considered as good as any of them in the market.

Q. Well, is it any better than a good many in quality and standard?

A. I don't know of but a few called standard mills or rated
667 as -ard.

E. J. LANNING.

Edward Goins.

EDWARD GOINS called and sworn on behalf of defendants.

Questioned by FLINN:

(December 29th, 11 a. m.—This deposition was taken by the master at this time, from whose notes this copy is made.)

My name is Edward Goins; residence, Albany, Oregon; occupation, miller; aged 44 years. I have been employed in grist mills at Albany for twelve years. I am one of the proprietors of the Red Crown mills there. I know the Magnolia mills property there at Albany, and I knew it in 1884 when Foster sold it to Crawford. I have known it for twelve years. I am acquainted with the value of mill property in Albany. The Magnolia mill property in 1884 was worth from $15,000 to $17,000. At the present time, if I wanted a mill right bad and had plenty of money I would not give $10,000 for it.

Goins Cross-ex.

Cross-examination by WOOD:

The cause of the depreciation of that property is that the property is getting old and that the roller system is now in use—a new system entirely. The Magnolia mill is not a roller mill entirely at the present time. The cost of converting the Magnolia mill into a full roller mill up to the same capacity it had would be—it would take about $18,000 or $20,000—in that neighborhood. At present the way business is going it would not pay to do it. The capacity of the Magnolia mill in the early part of 1884 was about 225 to 300
668 barrels in 24 hours; it might have been run to 325. I run those mills a very short time. It cost per 24 hours to run those mills about $25.

I don't recollect the price of wheat in January and February, 1884, but I think it was not more than ninety cents a bushel at the highest. In the Red Crown mills at that time it took about four bushels and 45 pounds of wheat to make a barrel of flour.

As to the Magnolia, I don't know exactly how much it did take, but I think it run about the same; perhaps four bushels and 48 pounds or a little more; I don't recollect exactly. I know we had

a loss when we cleaned up. I don't remember the price of standard flour at that time, but I think about $4.75 or along there for home use.

(Objection by Flinn as not cross-examination).

Goins Redi.

Redirect examination by FLINN:

Mr. Lanning kept account of the wheat weighed in and he calculated what was necessary to make a barrel of flour; he attended to that. I have no personal knowledge as to what wheat was necessary to make a barrel of flour in the Magnolia mills.

(Objection by Wood as leading.)

Q. If you were only guessing at the elements which go to make up the value of mill property you were only guessing at the value of the property when you gave your answer—your estimate in your answer in direct examination, were you?

A. I merely said if I was going to buy a mill I would not give more than $10,000 for that mill.

EDWARD GOINS.

Isaac Beam.

ISAAC BEAM called and sworn on behalf of defendants.

Questioned by FLINN:

Q. State your name, age, residence, and occupation.

A. Isaac Beam; aged 38; residence, Albany, Oregon; occupation, miller.

669 Q. Are you acquainted with James H. Foster and John A. Crawford, of Albany?

A. Yes, sir.

Q. By whom were you employed and in what capacity immediately prior to the sixth of February, 1884?

A. By James H. Foster, as retailer in the Magnolia mill.

Q. Do you recollect the sale by Foster to Crawford about that time?

A. Yes, sir; I recollect the transfer and the sale.

Q. You may state what occurred as to the possession or the change of possession. What was done by Mr. Foster towards discharging the hands, and what was done by Mr. Crawford, if anything, towards employing the hands in the mill?

(Objection by Wood as leading.)

A. Well, Mr. Foster discharged all the hands; well, I heard him tell them, three or four of the hands, and he told me he discharged me, and Mr. Crawford hired me right away and told me to go to work for him and he would see that I got my pay; that he wanted a man in the mill, and he would see that I got my pay; and I have remained there ever since.

Q. What did Mr. Foster do or say and where was he when he discharged the hands?

A. He was in the office. He said he had sold out his property, and he was broke up; that he did not own anything else; that he could not pay the hands, and he had nothing for them to do or to pay them with. That is the way he told me; he said, "I have nothing more for you to do; nothing more to pay you with."

Q. When was that? State as near as you can remember.

A. As near as I can remember, that occurred about the ninth or tenth of February. That was a few days after the sale.

Q. Who was present, if you recollect?

670 A. I don't think there was any one present, unless it was Robert Foster. I don't think there was any one.

Q. When did he discharge any of the other hands that were there, if there were any other hands?

A. Well, there was other hands there; there was one of the millers discharged about a week before that on account of suspending the running night and day.

Q. Well, I have reference to after that.

A. Well, there was one of the hands discharged. I think one of them was discharged the next day, two of them discharged the next day after he sold out, and the miller—I think the head miller—was discharged about the second or third day after the sale.

Q. You may state whether or not you measured or weighed the wheat that was in the warehouse and mill at the time of the transfer by Foster to Crawford; and, if so, at whose request you weighed it.

A. I measured and weighed the wheat both. I measured it first, and that was right—well, inside of two days, I should think, after the sale that I leveled it off and measured it. Then I was requested by Mr. Foster to weigh it, and I weighed every pound of it, every pound of wheat that I could find in the mill and warehouse afterward, I think. It took me some time to weigh it.

Q. Well, how much did it weigh?

A. It weighed 13,337 bushels and ten pounds.

Q. Who has been in possession or operating the Magnolia mills since that time, since that sale?

A. John A. Crawford.

Q. Are you still in his employ?

A. Yes, sir.

Cross.

671 Cross-examination by WOOD:

Q. Do you remember the weight of that wheat to the pound?

A. Yes, I do; for I have got it down in black and white, down in a book, and I went and looked at it before I came here.

Q. Is your memory pretty good otherwise?

A. Well, pretty good generally.

Q. Have you stated all of the conversation between you and Mr. Foster at the time you were discharged?

A. Well, about all, as far as I can remember it.

Q. Did he say anything about how he had sold out?
A. Yes; he told me that he had sold out to Mr. Crawford.
Q. He did not tell you on what terms, did he?
A. No, sir; he did not.
Q. He said that he was bankrupt, did he?
A. Just as I—he said that he did not own anything any more, and that he did not have any work for me.
Q. Did he say what forced him to sell out?
A. No, sir; he did not tell me at that time.
Q. Did he tell you at any other time?
A. Yes; he told me at other times that he had lost money on his flour that he had shipped.
Q. He told you that it was a genuine and absolute sale, did he?
A. Yes, sir.
Q. Did you continue to work under Crawford for the same salary you had under Mr. Foster?
A. Yes, sir.
Q. What was the name of this head miller that was discharged?
A. James B. Pipes.
Q. Do you know what led to his discharge?
A. Had no work at that time.
672 Q. Ever had a head miller since?
A. Yes, sir.
Q. How long after Mr. Pipes' discharge did he get one?
A. In the neighborhood of a year. Well, I don't know just the time.
Q. Have you got one now?
A. No, sir.
Q. Where is Pipes; do you know?
A. He is in Albany.
Q. How long did he keep the head miller when he had him employed?
A. One year.
Q. What was his name?
A. James B. Pipes.
Q. The same man, I presume, was he?
A. Yes; the same man.
Q. What did Mr. Crawford say to you when he employed you?
A. He told me that he had to have a man about the mill to look after things; that I knew all about the mill and knew the customers; that he could not get a better man that he knew of, and he wanted me to stay with him; and I told him that I would.
Q. He told you that he had bought the property, did he?
A. Yes, sir.
Q. That he was absolute owner, did he?
A. Well, or words to that effect. It was not just those same words.
Q. Did you have any idea, approximately, of what the weight of that wheat was before you weighed it?
A. Well, no, not particularly. I leveled it down and took a measurement of it and took it to the book-keeper, Robert Foster at

the time, and he figured it up and told me at the time. I don't remember what it was.

Q. How close was it to the scale weight of wheat by measurement?

A. I think it was within a few bushels; I think Robert made out in the neighborhood of that; I know I remembered at the time that I had made a pretty good estimate of it; it was within a few hundred bushels of it at the time; it was very close; I know I made the remark that it came mighty close to its being the same weight.

673 *Redirect.*

Redirect examination by FLINN:

Q. Did Mr. Crawford undertake to tell you that the sale was absolute, or did he simply say that he had bought it, and that he owned it, and nothing more?

(Objection by Wood as leading.)

A. Well, I don't know as he told me either, only giving me to understand that he owned the property; that he had bought it; that is the way I would take it, that he had bought the property and owned it. I don't remember what he said.

Q. Did Mr. Foster undertake to tell you anything about whether the sale was in good faith or not; and, if so, what did he say upon the subject?

A. No, sir; he never stated anything to me about it, that I know of, any more than that he had to sell his property to buy up wheat that he had ground, over-ground; that he had ground more wheat than he supposed, and that he had to sell his property to pay for it.

Recross.

Recross-examination by WOOD:

Q. I want to know whether you knew, in 1884, how much wheat it took to make a barrel of flour in the Magnolia mills?

A. No; I did not know in 1884, not until after Mr. Crawford got the mill, and then we made a test.

Q. Well, just go on and state if you knew then.

A. Well, I can't say. It was four bushels and 47 or 8 pounds to a barrel of flour that it took; somewhere along there.

Re-redirect.

2nd redirect examination by FLINN:

Q. Did you make any record of it?

A. None that I remember of.

Q. Who made the estimates—that is, who weighed the wheat in, and who weighed the flour and made the estimates?

A. I weighed the wheat in, and the flour packer weighed the flour out. It was put up in quarter-barrel sacks.

674 Q. Who made the estimates after the weights were made?
A. Well, there was two or three figured on that.
Q. Did you?
A. Yes, I did.
Q. You made the estimates from those figures?
A. Yes, sir.
Q. Do you remember the precise number of pounds it took?
A. No, I don't; for we have made several estimates since, and they vary from four 47 to four 49, to the best of my recollection. I am not certain but one time it went to four 50 pounds, to the best of my knowledge; I am not certain.

ISAAC BEAM.

Ashby Pearce.

ASHBY PEARCE called and sworn on behalf of defendants.

Questioned by FLINN:

Q. State your name, age, residence, and occupation.

(The direct examination of this witness was taken by the master, and this copy was made from his notes in long-hand.)

A. My name is Ashby Pearce; aged 65; residence, Benton county, across from Albany, Oregon; occupation, farmer, though I have been running a ferry also at Albany.

I am acquainted with James H. Foster, and have known him since 1853.

(Here Defendants' Exhibits "1" is shown to witness.)

That paper bears my signature. I done it for James H. Foster. He got the money out of Conner's bank.

I don't know why he got me to go there and get the money. I paid the note; I paid it to John Conner. I got none of the money that the note calls for; Foster got all of it. At the time I sign-d the note there was no consideration given for my doing so; I did it only to accommodate Mr. Foster.

(Objection by Wood as leading.)

675 Mr. Foster has not fully repaid me, but some time in February or March, 1884, he gave me a deed for a brick building, known as the Foster block, in Albany, and a hundred barrels of flour, and some shorts or middlings, perhaps $200 worth; that was in payment of the money I advanced him by that note. I took the brick building at $4,000. The flour was estimated at five dollars a barrel. The feed was estimated at $500, but I never got it all; I think I got $200 worth of it. He has paid me nothing since on account of that note. I don't know what that brick building is worth. I offered it to the Masonic lodge for $4,000, but they did not take it. They said it was too much. They solicited it, and I offered it to them at that price, but they would not give it. That property is encumbered with the life estate of Mrs. Foster after Mr. Foster's death.

I am one of the defendants in this suit.

I do not hold that property in secret trust for Mr. Foster; I hold it as part compensation for what Mr. Foster owed me. He stated that he could pay me no more with tears in his eyes. There was no agreement or understanding that I should reconvey it or hold it for Mr. Foster. I said, "I don't know what your business is; you may want it back." He said, "No, Mr. Pearce; it is your property for all time." I have received all the rents and profits of that property since I got the deed of it; it has been in my possession and under my control.

Cross-examination by WOOD:

(The following part of this deposition was taken by the reporter:)

Q. What do those rents and profits amount — per month?

A. The Masonic hall gives me $200 a year, and the store
676 below rents for $25 a month; that is all.

Q. The Masons are your tenants at present, are they?

A. Yes, sir.

Q. As I understand it, you state you had no consideration in making that note (referring to Exhibit "1")?

A. Yes, sir.

Q. You got no benefit from it, then?

A. Only the property which I stated.

Q. What induced you to make the note?

A. What is common for men to do favors for others. He had done me a great favor once in business; that was just one of the reasons.

Q. How do you know that Foster got the money?

A. I believe that I saw him get it out of the bank. I went into the bank, the bank wanted me to go for security, and the reason, as I stated, was the banker told me some time afterward that Foster could not get any more money without security.

Q. Then when counsel, in direct examination, asked you who got the money on this note, why did not you answer promptly instead of studying over it until counsel had to turn the note over to show you the endorsements on it and call your attention to them?

(Objection by Flinn because it gives a version to the question asked at the time referred to which is not correct.)

A. I am in bad health and I was trying to refresh my memory of the past.

Q. Have you ever gone on any other notes than this one for Foster?

A. Yes, sir.

Q. How many?

(Objection by Flinn as irrelevant and immaterial and not cross-examination.)

A. Yes, sir, two.

Q. To what amount?

A. $400 at one time; no, sir; I will take that back. I did
677 not go as security for him; I loaned him the money myself; I never went on any as conditional maker for him excepting for that $5,000.

Q. Have you ever stated anything contrary to what you are saying now in connection with this matter?

A. I never have, to the best of my memory.

Q. When was the brick block conveyed to you, if you remember?

(Objection by Flinn because the time of conveyance is not disputed but admitted.)

(Question withdrawn.)

Q. When did you receive the flour and feed on this note?

A. After—I think it was the latter part of March or April. It was set aside to me in the mill at the time that I got the note.

Q. You got what note?

A. I mean at the time I got the deed to the brick block.

Q. When did you get it?

A. I have not got the deed; it was, as I stated a bit ago—it was in February or March.

Q. Was it in the latter part, if at all, in February, I mean?

A. I can't say.

Q. Was it before or after the transfer of the mill to Crawford?

A. I don't know when that transfer to Crawford was.

Q. You consider this note as fully paid, do you?

A. Yes, sir, or no, sir; I said no.

Q. How much is owing on it?

A. Mr. Foster gave me that set-aside mill stuff, that and the flour, and he said, "Pearce, it is all I can do for you, because it is all I can get for you."

Q. And then did you consider it paid?

A. I consider that I have got all that I will ever get.

678 Q. Then you consider that the unpaid balance that you did not get is still owing to you if you can get it?

A. I don't consider it so, because Mr. Foster said he could not pay me.

Q. Well, if he can pay you or could pay you, do you consider it still owing to you?

A. Well, I would, because it was. Still I don't know as I could consider it so; I consider that I have got all I can ever get for that note.

Q. Well, now, it is very easy for you to say, Mr. Pearce, whether you consider that paid or not; do you consider it fully paid or not?

A. No, sir.

Q. You paid this note, did you?

A. Yes, sir.

Q. Is it in your possession now, or was it when it was brought here?

A. Yes, sir.

Q. It was brought from your possession?
A. I handed it to some one that brought it here.
Q. But it was in your possession?
A. Yes, sir; up until recently.
Q. Where have you kept it, and what payments have been made on account of this note by Mr. Foster to you?
A. My day-book journal, I believe, at home.
Q. What does that endorsement on the back of the note refer to?
A. I don't know.
Q. You did keep an account of the payment made on the note, did you, by Mr. Foster?
A. No, sir.

Redirect.

Redirect examination by FLINN:

Q. Did you keep an account or statement of what Foster
679 paid you to satisfy you for paying the note?
A. Why no more.
Q. You stated that you had an account of it on your books or journal.
A. I didn't understand that.
Q. You stated a short time ago, in answer to Mr. Wood's question, that you kept an account of what Foster paid you on that note, in your books at home, in your journal or ledger, or something of that kind; how is that?
A. It was simply what I got from the mill; the flour and bran that I got from the mill.
Q. You paid the whole of the note to Mr. Connor, did you?
A. Yes, sir; to Mr. Connor, at the bank. I believe there was one thing came up in my mind at that time that it would be well for me to state in looking at the note this last time; I went on that note—I don't want this to go down.
Q. You need not talk if you don't want it to go down.
A. I went there when it became due and gave my individual note, — my recollection — it. I may be mistaken in that, but then I am the party to that contract for that $5,000, and I am the party that paid it.

Recross.

Recross-examination by WOOD:

Q. Will you produce here your book or books showing the credits that you made to Foster on that note?
A. I could not; because I never kept account only of the mill stuff.
Q. Will you produce them here or before Mr. Durham, at Albany?
A. I will produce what I have got.

ASHBY PEARCE.

680 I, J. R. Baldwin, reporter in the within and foregoing suit in the taking of testimony before Geo. H. Durham, master, hereby certify that the within and foregoing is the testimony for defendants and the whole thereof, so far as reported by me, and a true and correct transcript made as per stipulation made and filed of record in this suit.

J. R. BALDWIN,
Stenographic Reporter.

681 ALBANY, *December 30th*, 1886, at one p. m.

Parties met by consent—the complainants being represented by Messrs. Weatherford and Wolverton, and the defendants by L. Flinn, Esq.—when the following proceedings were had, to wit:

WILLIAM CRAWFORD, called as a witness by the defendants and duly sworn, testified as follows:

My name is William Crawford; residence, Albany, Oregon; age, 75 years; am a defendant in this case; am not engaged in any occupation now, as I am not able to do so; I used to follow milling.

(Here the six notes marked Ex. 6 are shown the witness.)

I am the William Crawford named in these notes. These notes were given in lieu of the five notes marked Ex. 7. My brother, John A., did the business for me. He has acted as my agent since 1886, when we got the mill first. He has transacted all my business since that time. These five notes were at ten per cent. interest when the legislature passed the law that ten per cent. was to be the legal interest; we reduced the interest two per cent., and Foster was not to take the same out of his indebtedness. He was to pay the taxes. He told me that John and him had made an arrangement that he, Foster, was to pay the taxes on all the notes that I held of his. I don't recollect that I was notified by Stewart that I would have to pay the taxes on the mortgage given to secure the five notes (Ex. 7).

James H. Foster, as a matter of fact, owed me the five notes, Ex. 7, except what was endorsed thereon, when the six notes were given to take them up. I recollect the time Foster deeded me the brick block. When he did so John took these six notes and turned them in to Foster. Foster owed all of these six notes, every dollar of them, at the time he deeded me the brick block, in Feb'y, 1884.

682 My brother surrendered up these notes, Ex. 6, when the deed was made. I was not present at the transaction of making said deed; my brother acted for me. I authorized my brother to act for me in taking that deed of Feb'y 6, 1884. Whether it was at the time these five notes, Ex. 7, were made or shortly after, Foster told me in my brother's presence that the arrangement was that Foster should pay the taxes on these five notes. I hold that brick block deeded to me by Foster in trust for no person but myself. Wm. Foster has no interest in it, either directly or indirectly. No, sir; there is no agreement nor was there any that Foster should

have any interest in that property, and I don't hold it for any one but myself. The five notes, Ex. 7, were given for the flouring mill.

Cross-examination by Mr. WOLVERTON:

My brother has been acting for me since 1856, at the time I got the mill, and he did all the business for me, keeping accounts, etc. In the way of keeping accounts, etc., he has done all the business for me. I followed the milling business, and he did all other. At the time these notes, Ex. 7, were taken, my brother sold the mill. I was present when the notes were taken; they were laid on the table. The mill belonged to me at that time. My brother had no interest in it then. I suppose my brother received the payments that are endorsed on these five notes, Ex. 7; I didn't. My brother didn't pay the money over to me. These notes, Ex. 7, were in the safe up at the house from the time they were given to July, 1883. I had keys to the safe and John had too. I could see them whenever I wanted to.

I seen them several times prior to July, 1883, and told John
683 not to let the notes run out by being too long without payment, and he said he wouldn't. I didn't have anything to do with Foster; he done it all. I know of my own knowledge that these notes, Ex. 7, were not paid off until they were paid off with these, Ex. 6. I know when he took these notes, Ex. 7, to Foster and brought these notes, Ex. 6. I saw notes Ex. 7 when John took them away; saw them in his hand. I can't tell what date he took them away; I can't recollect dates now unless I seen the date marked on the paper. I couldn't say that these notes, Ex. 6, were given on July 20, 1883, but I think it was that time. I didn't see them given. I wasn't present, and didn't hear the arrangement between John and Mr. Foster at the time the notes Ex. 6 were given. All I know about that affair is what my brother and Mr. Foster told me; they did the business themselves.

Q. State what arrangement was made between yourself and your brother whereby it was agreed that you should take the deed to the brick house in your name—the deed from Foster in 1884?

A. The arrangement betwixt me and my brother was to have them secured that I wouldn't lose them. We didn't talk about the brick building here, and I didn't know what he was to get, and then when he saw Foster again he told me. He told me I was to get the brick store. The object in taking the brick store was to secure me in the payment of them six notes (Ex. 6). I cancelled the mortgage of record given to secure Ex. 7. I cancelled the mortgage not to pay taxes on it and Foster on the notes. No; I wasn't paying taxes on it prior to the cancellation. I had no agreement with Foster; only he told me that he and John had arranged that Foster was to pay the taxes on notes in Ex. 6. I made no arrangements
684 with Foster in anything. My brother John has no interest at all in the brick store.

Q. The consideration named in the deed to the brick store was $25,000, and the amount of those six notes marked Ex. 6 is $16,400.

Did you pay your brother the difference between the notes and the consideration named in the deed?

A. At the time the mill was sold my brother got $6,000 in money and notes. I told him to put it away in the safe. He didn't give me any account of that money, and he had that $6,000. He told me that Foster paid him, I think, $3,000 on notes besides those in evidence. I consider that was paying it. John owed me that. Foster got it from him; at least he told me so. I couldn't say how much my brother owed me in February, 1884, at the time I got the deed. I know he got that, and got some other money of me. He hasn't owed me the $6,000 ever since 1867. He loaned the Odd Fellows $5,000 and took the note in my name. When the Odd Fellows paid it they paid it to him, John, and John used it. I didn't get it. John had more than enough for to make out from the $16,400 to the $25,000. These six notes, Ex. 6, are worth more than the house now, if they could be collected. I am not the owner now of these six notes, Ex. 6. I was, but they were given to Foster for the brick. I did not see those six notes delivered up to Foster. The way I know Foster owed every dollar of those notes is that the notes were there and John took them to Strahan's that night when he was getting the deeds. I never knew what Mr. Foster owed my brother; I knew he owed him, but what I don't know. My brother never told me how much Foster owed him. I don't recollect whether I ever saw any notes from Foster to my brother in
685 the safe when these notes, Ex. 7, were there. I never looked for his notes. I know he loaned him money for to buy wheat that fall he got the mill—that Foster got it. I never looked for John's notes. Maybe I might have seen them if I had looked. He kept his notes in the same safe, in a big envelope or pocket-book. I never hunted through them. He scarcely ever told me his business. I didn't know that he endorsed for Foster until after—about the time the transfer of the mill was. I knowed Foster was owing him, but what amount I didn't know.

WM. CRAWFORD.

GEO. H. DURHAM, *Master.*

Counsel for defendants here offers in evidence all the original notes, copies of which have heretofore been made and filed herein, and said originals are marked respectively with the same numbers borne by the respective copies.

D'f'd'ts Rest.

Counsel for defendants here rest, reserving the privilege of offering, before the hearing, certain certified copies of pleadings and records.

GEO. H. DURHAM, *Master.*

686 Parties met at the office of the master, in Portland, Oregon, on the 11th day of March, 1887, at 10.30 a. m. by consent, the plaintiff appearing by Mr. C. E. S. Wood and Messrs. Weather-

ford and Wolverton, and the defendants Crawford and Foster appearing by Messrs. L. Flinn and Whalley and Bronaugh; Mr. Balding being absent, Mr. Richardson is, by consent, sworn as stenographer in the case under the terms of the stipulation heretofore entered into; whereupon the following proceedings were had:

Complainant's Rebuttal—G. W. Gray.

Testimony of G. W. Gray.

G. W. GRAY, being called and duly sworn as a witness on behalf of complainant in rebuttal, testified as follows:

By C. K. WEATHERFORD, for complainant:

Q. What is your name, age, residence, and occupation?

A. G. W. Gray; 49 years old; dentist by occupation; residence, Albany, Oregon.

Q. Are you acquainted with John A. Crawford?

A. Yes, sir.

Q. And James H. Foster?

A. Yes, sir.

Q. What relation, if any, do you bear to Mr. Foster?

A. Mr. Foster was my brother-in-law by marriage by his first wife.

Q. What note, if any, was placed in your possession to hold in trust for J. H. Foster signed by John A. Crawford on or about the 6th day of Feb., 1884?

(L. FLINN, Esq., for the defendants: Objected to as immaterial, irrelevant, and incompetent.)

A. I diden't have any particular note intrusted to me. I purchased a note of Mr. J. H. Foster on Mr. J. A. Crawford with certain conditions.

687 Q. Did Mr. Foster place in your hands a note to hold in trust for him signed by John A. Crawford calling for the sum of $10,000, which you held for a short time to secure the purchase by Crawford of a lot of outstanding wheat about that time?

L. FLINN, Esq., for the defendants: Same objection as last above, and leading.

A. I purchased a note of Mr. J. H. Foster on J. A. Crawford for $10,000 with certain conditions.

Q. When did you purchase it?

A. I couldn't give the date.

Q. About the date?

A. I couldn't give any date, for I don't remember.

Q. What year?

A. It was the same year that Mr. Foster bursted up.

Q. Was it as late as August of that year?

A. I couldn't give the month now, because I haven't made any record of it.

Q. What is your best recollection of that?

A. I have no recollection about the month at all—that is, now.

Q. Do you remember when he failed?

A. No, sir; I don't recollect the month.

Q. Do you remember what season of the year it was—spring, winter, or fall or summer?

A. I think I gave so little consideration to that that I couldn't tell that even—whether it was spring or fall. My impression is that it was in the spring.

Q. What were the conditions that you purchased the note of $10,000 signed by John A. Crawford in favor of James H. Foster?

L. FLINN, Esq., for the defendants: Same objection as last above.

688 A. The conditions, as near as I remember them, were that in case a certain amount of wheat was produced Mr. Foster should have the note back—wheat to be purchased by Mr. Crawford.

Q. Who made that condition, and who was it made with?

A. Mr. Foster and I.

Q. Was that all the condition there was about it?

A. I believe it is.

Q. What did you pay for the note?

A. I paid $9,500.

Q. Who did you pay it to?

A. Mr. Foster.

Q. Did you have that much money on hand at that time?

A. No, sir.

Q. How did you pay him?

A. I gave him my note.

Q. You just exchanged notes with him?

A. I gave him my note for that note on Mr. Crawford.

Q. Did you pay your note that you gave him; did you pay the note for $9,500 that you gave to Mr. J. H. Foster?

A. No, sir.

Q. Does he still hold that note?

A. No, sir.

Q. When did you pay it?

A. I gave it to him back again when that wheat was purchased—the condition of the note on which the note was given—was purchased.

Q. Does he still hold the note that you gave him, $9,500?

A. No, sir; I just stated that I got that note back when this wheat was purchased by Mr. Crawford—the conditions on which I purchased the note from Mr. Crawford when they were fulfilled.

689 Q. When did you get the note back?

A. I couldn't remember the date any nearer than I remember the date of the other.

Q. Was it as late as 1886?

A. It was that same year that Mr. Foster broke up.

Q. Did you give your note for the full purchase price of the Crawford note of $10,000?

A. I gave my note for that amount for the note, for the other note.

Q. Who wrote the note that you gave to Foster?

A. I am not sure who did write it.

Q. Where was it written?

A. I am not sure as to that, whether it was written in my office or elsewhere.

Q. Who was present when it was signed?

A. I don't recollect of any person being present, except Mr. Foster; that is my present impression.

Q. Didn't you testify in a case wherein W. H. Goltra was plaintiff and J. H. Foster and John A. Crawford and William Crawford were defendants, in the circuit court of Linn county, State of Oregon, at the June term of that court, 1886, before Judge Boise, that you never had a note in your possession signed by John A. Crawford in favor of James H. Foster for the sum of $10,000, the 6th day—the 6th or 7th day—of February, 1884?

A. No, sir; I didn't. I testified in answer to a question something like this: Was there any note left—I don't remember the exact words of the question—was there any note left in your care or in your possession for your safe keeping, or something to that effect, belonging to him? and I said no; I didn't know of any particular note; that I didn't know that I had any particular note
690 left in my care. That was the substance of it. I didn't consider when I purchased the note that it was just simply left in my care.

Q. Didn't you also testify in substance in the same testimony that James H. Foster never presented to you such a note?

A. No, sir.

Q. Have you any idea of the length of time that you kept that note for $10,000?

A. No, sir; I don't recollect the length of time I had it.

Q. Did you deposit it in the bank or any firm?

A. I deposited it in a safe of Mr. Blaine's with some papers that I had that I kept in Mr. Blaine's safe. I have a bundle of papers there now. I kept my papers in his safe.

Q. What other transaction did you have with Mr. Foster about that time?

L. FLINN, Esq., for the defendants: That is objected to as immaterial and irrelevant and incompetent.

A. I don't recollect of having any other transaction with him now.

Q. Did you buy any property for him?

L. FLINN, Esq., for the defendant: Same objection.

A. I never bought any property for Mr. Foster that I recollect of—that is, any real-estate property.

Q. Do you hold any in your name for him?

L. FLINN, Esq., for the defendants: Same objection.

A. No, sir.

Q. Have you sold him any property or agreed to sell him any on which he has made any part payments?

L. FLINN, Esq., for the defendants: Same objection.

691 A. No.

Q. For him or any of his children?

A. I purchased property for some of his children.

Q. Which one?

L. FLINN, Esq., for the defendants: Same objection.

A. Mrs. Powell.

Q. Who furnished the money?

L. FLINN, Esq., for the defendant: Same objection.

A. I supposed she furnished it. I don't know who furnished it, unless she did.

Q. What property did you purchase up there?

L. FLINN, Esq., for the defendants: Same objection.

A. I purchased a quarter of section of land—prairie.

Q. Near Halsey?

A. Yes, sir.

Q. When?

A. I believe it was last spring. I couldn't tell—couldn't give the date—but I believe it is last spring. If I had known you wanted the dates I could have brought them with me, perhaps.

Q. In whose name is that property now on the record?

L. FLINN, Esq., for the defendants: Same objection.

A. It is in my name.

Q. Some one else furnished you the means to buy it with?

A. She furnished a part and I furnished a part.

Q. Who went to examine the land before you purchased it?

L. FLINN, Esq., for the defendants: Same objection.

692 A. I don't know; I think Mr. Foster went up to look at the land.

Q. Did you ever look at it?

A. I had been over it; yes, sir.

Q. Did you have him go up and look at it before you bought it?

A. Yes, sir.

Q. He went up to look for you?

A. To look for me and for his daughter.

Q. Did he tell you what to give for it?

L. FLINN, Esq., for the defendants: Same objection.

A. No, sir.

Q. He advised you with references to it, did he?

A. Yes, sir.

Q. Did he hand you the money with which you paid for it, or a portion of it?

A. I think he did—a portion of it.

Q. What proportion of it?
A. About half.
Q. Who furnished the other half?
A. I did.
Q. Do you remember the amount he handed you?
A. No, sir; not exactly.
Q. Approximate as near as you can.
A. I don't like to make an approximation unless I could give the sum.
Q. Was it as much as $5,000?
A. No, sir.
Q. $3,000?
A. No, sir.
Q. $2,500?
A. No, sir.
693 Q. Well, about how much?
A. My recollection is it was in the neighborhood of $1,500; might have been more or less.
Q. What paper did you execute to Mr. Foster or his daughter for the convevance of that land, if any?

L. FLINN, Esq., for the defendants: Same objection, if he executed any, and also that the paper itself, if any was executed, is the best evidence of what it is.

A. I couldn't give the exact statement of that. I took Mrs. Powell's notes—4 notes of her for $400 each—for the payment of the amount that I put into the land, with interest at 10 per cent. per annum on each note.
Q. Did you execute any kind of a paper at that time and deliver it to her or to Foster?

L. FLINN, Esq., for the defendants: Same objection.

A. I did.
Q. What was the nature of it?
A. I don't recollect.

L. FLINN, Esq., for the defendants: Same objection. The paper itself will show.

Q. Have you the paper?
A. No, sir.
Q. Where is it?
A. I don't know whether Mrs. Powell has it or not.
Q. Who did you hand it to?
A. I am not sure, but I think I handed it to Mr. Foster, as he was advising in reference to his daughter's business.
Q. Did any one sign the notes with Mrs. Powell?
A. No, sir.
694 Q. Were they signed by her in person?
A. I presume they were. I received them in an envelope from Portland.

Q. With whom did you do most of the business—with Mr. Foster or his daughter, Mrs. Powell?

L. FLINN, Esq., for the defendants: Same objection.

A. Did most of it with Mr. Foster, as he was advising with his daughter.

Q. Isn't it a fact you did it all with Mr. Foster?

A. I don't know that I did it all or not. I am not sure whether I had any direct letters from Mrs. Powell on the subject or not.

Q. Did you ever talk with Mrs. Powell about it before the transaction was consummated?

L. FLINN, Esq., for the defendants: Same objection.

A. No, sir; I think not.

Q. All the talk was done with Foster?

A. My recollection is that the principal talk and the business was done through Mr. Foster.

Q. And he went up and looked at the land?

A. Yes, sir; at her and my request.

Q. You never heard her request him to go?

A. No, sir.

Q. You don't know whether she did or not?

A. I think that—my impression is that he showed me letters from her authorizing him to attend to the business for her.

Q. Who receives the rent of that place?

A. I receive it.

Q. What do you do with the proceeds of it?

L. FLINN, Esq., for the defendants: Same objection.

695 A. Apply it towards the payment of the interest on these notes that I hold for the money that I loaned. The wheat is turned over to me at the warehouse to satisfy the interest on these notes that Mrs. Powell gave me in payment for the land.

Q. Who turns it over, Mr. Foster?

A. I think it is turned over by the man that owns the farm to the warehouseman in my name.

Q. Mr. Foster rents it, does he?

A. No, sir; I rent it. Mr. Foster attends to the business for me when it is convenient for him to get there in behalf of his daughter; as she is the —, the land belongs to her.

Q. Have you been on the farm since you purchased it?

A. No, sir.

Q. Do you know who lives on it now?

A. I don't know his name. He is a German.

Q. Isn't that the same place that Mr. Foster was negotiating the purchase of just before his failure?

L. FLINN, Esq., for the defendants: Same objection.

A. I don't know whether he was negotiating for the purchase of the place before his failure or not; not that I know of.

Q. Who examined the title before you purchased it?

A. I think I did to some extent, and Judge Flinn and Mr. Chamberlain.

Q. Doctor, what was the cause or reason of your buying that Crawford note at the time that you did?

L. FLINN, Esq., for the defendants: Objected to as immaterial and incompetent.

A. I don't know as I had any particular reasons for it.

Q. Was there any conversation between you and Mr. Foster at the time?

696 A. Yes, sir.

Q. What was it?

L. FLINN, Esq., for the defendants: Same objection.

A. I don't recollect what conversation we had; we talked very often; we frequently talked together about business.

Q. What was said about the purchase of the note?

A. Well, I think we talked something about securing the purchase of this wheat.

Q. What was said about you buying the note of him?

L. FLINN, Esq., for the defendants: Same objection.

A. I don't recollect what he said. He said that he wanted to secure the purchase of this wheat.

Q. Crawford's note was considered good, was it not?

A. I believe so.

Q. Fully as good as yours?

A. I don't know as to that. I suppose it depends on how people think of he and I. Mine might not be considered worth much; I don't know.

Q. You considered it as good as yours?

A. If I hadn't I wouldn't have purchased it, I don't think.

Q. You made $500 on the purchase?

A. That was the understanding, that I was to have $500 if I had to collect the notes, if the wheat wasn't purchased.

Q. Did you ever receive anything at all on it?

A. No, sir; Mr. Foster said that Mr. Crawford had purchased the wheat, and then the conditions on which the note was purchased was fulfilled, and I returned him the note for my own.

Q. Gave up $500?

A. Yes, sir.

697 Q. Did he tell you at that time that he was in failing circumstances?

L. FLINN, Esq., for the defendants: Same objection.

A. I don't recollect what he told me.

Q. Did he give you any reason why he wanted to sell the Crawford note?

A. I suppose he did assign some reason; I don't recollect.

Q. You can't recollect anything about it?

A. Very little.

Q. Tell what you do.

A. Because those things I give my mind as little consideration as I can.

Q. Were you in the habit of making purchase of $10,000 notes so often that you didn't think about it?

L. FLINN, Esq., for the defendants: Same objection.

A. No, sir.

Q. Did you ever before or after that time buy a note for $10,000 — note on a person?

A. No, sir.

L. FLINN, Esq., for the defendants: Same objection.

Q. That is the only instance of the kind you ever had?

A. Yes, sir.

Q. And cannot remember anything that was said about it?

A. My recollection is that those conditions that I have made a statement of concerning the note were the reasons why he wanted to sell the note—to see that that wheat was purchased by Mr. Crawford.

Q. Were those conditions in the note?

698 A. No, sir; they were verbal.

Q. And that was the reason he wanted to sell you the note?

A. That is my understanding, that he wanted to secure that wheat.

Q. Was that the only reason he gave you for selling the note?

L. FLINN, Esq., for the defendants: Same objection.

A. I couldn't say. He might have assigned other reasons.

Q. Are you in the habit of purchasing notes?

L. FLINN, Esq., for the defendants: The same objection to all these questions.

A. No, sir.

Q. Have you during the year 1884 purchased any other note than the one of James H. Foster signed by John A. Crawford?

A. No, sir; I think not.

Q. That is all.

Cross-examination by L. FLINN, Esq., for the defendants:

X Q. You say the sale was a conditional one of the note mentioned?

A. Yes, sir.

X Q. How much wheat was Mr. Crawford to purchase from Mr. Foster?

A. I don't recollect the amount.

X Q. Didn't Mr. Foster in that transaction with you tell you that Crawford was to purchase all the short wheat?

A. Yes, sir.

X Q. And if he did that, then you were to let Foster have the note back and he was to surrender your note to you?

A. Yes, sir.

X Q. Were those the conditions?

A. That was the condition.

699 X Q. If Crawford didn't purchase the wheat, then you were to keep the note?

A. I was to keep the note and collect it.

X Q. And Foster was to keep yours?

A. Yes, sir; Foster was to keep mine.

X Q. About how long after you purchased the note you got or made that arrangement was it that Foster come to you and told you that Crawford had performed?

A. I don't recollect the time, but it wasn't a very great while. It was only a short time.

X Q. Then you surrendered the note to Mr. Foster?

A. Yes, sir.

X Q. That Mr. Crawford had signed?

A. Yes, sir.

X Q. And he surrendered the note you had signed to him to you?

A. Yes, sir.

X Q. And you never paid him anything in money?

A. No, sir.

X Q. And he never paid you anything?

A. No, sir.

X Q. Simply an exchange of paper?

A. That is all.

X Q. Your attention has been called to some land that you say you purchased for Mrs. Captain Powell, is it?

A. Yes.

X Q. Mrs. Captain Powell here, of Portland?

A. Yes, sir.

X Q. Mrs. Captain Powell, of Portland?

A. Yes, sir.

700 X Q. What relation is she to you?

A. She is my niece.

X Q. State if at that time you didn't have about $1,500 or $1,600 that you wanted to loan.

A. Yes, sir; I had $1,600. I wanted to loan it and did.

X Q. Is it not true you hold it by way of mortgage as security for that money?

A. Yes, sir.

X Q. From her?

A. Yes, sir.

X Q. Before you let her have the money on the terms which you did, you may state whether you consulted any lawyers as to whether you could do it in that way and be safe yourself.

A. I did.

X Q. For the money and secure yourself in that way?

A. I did. I consulted with Judge Flinn and Chamberlain.

X Q. Did you not also employ them to look at the title to this land?

A. I did.

X Q. Before you let your money go?

A. Yes, sir; I did.

X Q. You may state if you didn't give Mrs. Capt. Powell a bond for a deed when those notes were paid.

A. I gave her—yes, sir—a bond for a deed. I think it is. I gave her a paper—a contract or a paper myself guaranteeing to her that as soon as these notes on which I loaned the money were paid to me I should deed her the farm.

X Q. Do you remember what you paid for the farm—the whole amount of the price?

A. The total amount that was to be paid for the farm was $3,200. I had reserved $200 until the—there being a little cloud on
701 the title—till that cloud was cleared up; that I still have in my possession.

X Q. The title isn't yet fully cleared up?

A. The title isn't fully cleared up.

X Q. Slight defect?

A. Yes, sir.

X Q. I believe Mr. Wolverton, one of the attorneys for the plaintiff here, is interested in clearing that up, is he not?

A. I am not sure as to that.

C. K. WEATHERFORD, for the plaintiff: I object; that is immaterial.

X Q. Of whom did you purchase this land; do you recollect?

A. The owner of the land was Wm. Finley, but the business was transacted through an agent that he had employed. I don't know whether I can state his name or not. I would know it if I would hear it.

X Q. Well, isn't it true that Mr. Wolverton is employed by this party to clear up the title so that he can get this $200?

C. K. WEATHERFORD, Esq., for plaintiff: Immaterial.

A. I don't know that he is. I don't know. He was there at my office with Brandon—I believe that is the man's name—he was there at my office to see about it, and wanted me to give him a guarantee that I should pay back the $200, and I told him that the $200 was in the bank ready for him as soon as that title was cleared.

X Q. Didn't he tell you that he had employed—Mr. Brandon had employed Mr. Wolverton to straighten it up and get the title cleared so that he could get that money?

A. He said something about Mr. Wolverton. I don't recollect what it was.

X Q. Has James H. Foster any interest in that land?

A. Not that I know of, unless it is simply the interest that
702 he would have in his daughter's welfare.

Redirect examination by C. K. WEATHERFORD, Esq., for the plaintiff:

R. D. Q. What did Foster say about his creditors trying to attach or get possession of that note at the time he sold it to you or turned it over to you as you stated?

L. FLINN, Esq., for the defendants: That is objected to, because the witness has been over it and it is not redirect; he has asked him several times what Foster said; incompetent, irrelevant, and immaterial.

A. I don't recollect that he said any particular thing, unless it was that he didn't want the note to fall into the hands of any one until the wheat was secured.

R. D. Q. What was it he said about his creditors attempting to get hold of it?

L. FLINN, Esq., for the defendants: Same objection.

A. I don't think he said anything about anybody attempting to get hold of it that I recollect of.

R. D. Q. Wasn't there something said about some one trying to attach him?

A. He might have said something about attaching. I don't recollect that he did even that. Great deal of conversation that he and I have that is simply just our mutual interests in affairs, he being my brother-in-law, and consulting on business affairs frequently.

Correction.

After the testimony of the witness was read to him he desired to make the following corrections: Since giving the above testimony I have tried to call to memory from whom I received the money to pay on that land, and I think I received the larger amount
703 of it from Mr. Ashby Pierce, a small amount from Mrs. Mattie Foster. The balance of the money received from rents of land purchased over and above what to pay interest was to be applied in redeeming notes given by Maggie Powell to me—Mrs. Capt. Powell.

G. W. Gray, Recross.

Recross-examination by L. FLINN, Esq., for thedefendants:

R. X Q. What do you mean in answer to question, when you say the man who owned the farm turned the wheat over to the warehouse men for you or placed it in the warehouse in your name?

A. I didn't know that I made the statement as given in question. What I intended to convey was that the rents from this land for which I hold the deed was delivered to me in the warehouse at Halsey to be applied as above stated on notes given by Maggie Powell to me—or Mrs. Capt. Powell.

R. X. Q. Who delivered the wheat in the warehouse for you?

A. The man that rented the farm. His name I can't now give, but he is a German.

R. X Q. You stated in answer to question No. —, in substance, that you purchased the $10,000 note from Crawford; what do you mean by that?

A. I didn't intend to convey such an idea, for I purchased the note of Mr. J. H. Foster.

2d, G. W. Gray.

2nd redirect examination by C. K. WEATHERFORD, Esq., for the plaintiff:

R. D. Q. How much money did Ashby Pierce give you to pay on that land?

A. I don't recollect the amount. I think it was the larger portion of what I had previously stated that perhaps Mr. Foster might have given me for Mrs. Captain Powell.

704 R. D. Q. When was it that Pearce gave you that money?

A. I couldn't state the time.

R. D. Q. Did he give you as much as $1,000?

A. I don't recollect the exact amount.

R. D. Q. How did he happen to bring it to you?

A. I can't tell. He just came up and handed me the money, stating he supposed I understood it, I believe, or something like that.

R. D. Q. Did you understand it?

A. I did.

R. D. Q. Do you remember the time or within three or four months of the time that he brought you that money?

A. I don't recollect the time. It was shortly after I had made the arrangement to purchase the above-named land.

R. D. Q. Was that all he said, that you have just stated, at the time he brought you the money?

A. I am not right sure that he made the statement above, but something to that effect.

R. D. Q. Did he say anything else?

A. Not that I recollect of.

R. D. Q. This Ashby Pierce you speak of, is he one of the defendants in this case?

A. I believe he is.

R. D. Q. Who is Mattie Foster referred to here?

A. She is the daughter of Mr. James H. Foster.

(Signed) GEO. W. GRAY.

705 *Testimony of W. H. Goltra.*

W. H. GOLTRA, being recalled by the complainants in rebuttal, testified as follows:

Direct examination:

By J. K. WEATHERFORD, for the complainant:

Q. Mr. Goltra, you may state whether or not there was any note executed by J. H. Foster under the name of J. H. Foster & Co. or

otherwise about the time of the failure in 1884, or transfer of his property to John A. Crawford, and delivered to you by him or any one for him; and, if so, state all there was about it and what was said in reference to it.

L. FLINN, Esq., for the defendants: That is objected to because it is not rebuttal of anything offered by the defense; it is immaterial, irrelevant, and incompetent.

A. There was a note made and given to me shortly after the transfer—I don't remember the exact date—and it was given for the purpose of covering proceeds said to be in certain flour here in Portland, and it was given for the purpose of keeping it from being attached, if there were any proceeds, which he stated at that time there was over and above claims already against the flour. Some of the flour was afloat and some was here in the hands of the Bank of British Columbia. Mr. Foster seemed to think that there would be more in the proceeds of the flour than would pay my claim, and he wished to have the disposition of that, whatever there might be, over and above what was to pay me—that is, the disposition of it. I don't know what he was going to do with it, but that is what he said, and he gave me a note that was a duplicate of a note that I had
706 held against him the year before for wheat sold to him. The amount of the note, if I remember right, was about $2,750. That note was written by his son R. A. Foster—he was keeping the books at that time—and signed by James H. Foster, who was in the office sitting at the table, and his son was at the desk—Mr. R. A. Foster—and the note was entered on the journal in my presence.

Q. On whose journal?

A. Mr. Foster's journal I supposed it was; it was open on the desk there before Mr. R. A. Foster.

Q. Was that also dated back?

A. It was dated back—intended to be at least the same date of the note that I had held and was paid off sometime in the year before; I don't remember the date of the note, but the note had been paid off I think late in the fall.

Q. How long did you keep that note, if you took it all?

L. FLINN, Esq., for the defendants: Same objection as last above.

A. I had it in my possession several days; I don't remember just how long.

Q. What became of it?

A. I took it back, and gave it to R. A. Foster in their office.

Q. Was there any conversation at the time you took it back?

L. FLINN, Esq., for the defendants: Same objection as last above.

A. I told him I had had the note long enough; I was satisfied there was no proceeds in the flour.

L. FLINN, Esq., for the defendants: A further objection; this is a conversation with R. A. Foster, as I understand it; it is hearsay.

707 Cross-examination.

By L. FLINN, Esq., for the defendants:

X Q. How much did Mr. Foster owe you, Mr. Goltra, at the time he gave you this note that you have just spoken of?

A. I think I held a note against him of $2,400 and I think $60—I won't be positive; some $60 odd, $2,400 and something; that is my recollection of it—for wheat sold just a few days prior to the transfer of the property.

X Q. Was that all he owed you at that time?

A. That is all he owed me at that time.

X Q. At the time that—how long after the transfer was it that he made this note for $2,700, dated a year back or thereabouts?

A. I don't remember, but it was only a few days; I couldn't state the date.

X Q. Was it before or after he gave you a bill of sale of the flour that was in Portland and had been shipped by Sibson, Church and Company?

A. It was after he gave the writing; I never called it a bill of sale; it was intended to cover the proceeds over and above all those claims; it was after that.

X Q. How long after that, do you know?

A. I couldn't state exactly; but it was only a few days, I think.

X Q. Where was that writing or bill of sale—we will call it that for the purpose of identification—at the time he gave you the note?

A. I think it was in my office; that is my recollection of it.

X Q. In your custody, was it?

A. In my custody; yes, sir.

X Q. Did that bill of sale, or writing, purport to convey to
708 you all the proceeds of the flour that Mr. Foster owned that was situated in Portland and that had been shipped but not sold?

C. K. WEATHERFORD, Esq., for the complainant: Object to that; not cross-examination.

A. All of the proceeds on all of the flour over and above claims already held against it.

X Q. Advanced, you mean? Advances, was it?

A. Advances or whatever you might call it.

X Q. Did you understand that there was any mortgages or liens except what was advanced against it by the bankers or shippers of Portland?

A. Well, only for freights and storage, etc.; liens in that way. He never stated the amount of those liens, but he did state the amount of money that had been loaned on that flour per barrel would be $2 or about $2.70. I think he used the word $2.70 per barrel.

X Q. Wasn't it $3?

A. Two is what he told me at the time—$2.70 per barrel—that is, all was in the hands of the Bank of British Columbia; that is my recollection of it, stating that there was where most of the proceeds he expected would be.

X Q. You retained the note that he gave you until you ascertained sufficient about the flour to believe that there was no margin left—that there would be no margin left to pay your indebtedness—did you?

A. I was satisfied from the first that there was no money there to pay my indebtedness, as far as that is concerned.

X Q. Were you satisfied when you took this $2,700 note that the flour wouldn't bring sufficient or any amount over and above
709 the advances?

A. I was satisfied that there was no proceeds over and above what had been already advanced and liens which would show there against the flour?

X Q. At the time you took that $2,700 note didn't you know that there was no consideration for it?

A. There was no consideration except what he was manufacturing. That is the way I looked at it.

X Q. Didn't you know that there was no consideration for it at the time that you took it?

C. K. WEATHERFORD, Esq., for the complainant: Objected to for the reason he just answered the question.

X Q. I am not speaking about fictitious matters.

A. I will state right here that I—every statement made by Mr. Crawford and Mr. Foster to me—they conflicted so much that I was satisfied that notes had been or would be manufactured to suit the occasion, and I took that as one of them.

L. FLINN, Esq., for the defendants: The answer is objected to because it is not responsive to the question, and I will repeat the question.

X Q. Didn't you know that there was no consideration for that $2,700 note when you took it?

A. I did; but I took it, as Mr. Foster requested, to cover anything for him, as he wished to have the disposition of the proceeds that he was representing; that I was satisfied wasn't there.

X Q. You were willing, then, at that time to assist Mr. Foster in that way, were you?

A. I felt friendly towards Mr. Foster and offered to help
710 him if I could be of any use to him and take up his paper, so that he could go on with his business, as he had stated to me in substance at different times that he expected to go on with his business again.

L. FLINN, Esq., for the defendants: Answer is objected to as not responsive to the question.

X Q. Were you willing at the time you took that note to assist Mr. Foster in that way?

A. I was willing to assist him in any legal way that I could if he could go on with his business.

X Q. At the time that you took the note away did you intend to hold it for him as he had requested you?

A. I took the note away expecting to return the note when I took it away.

X Q. Did you intend to hold the note for him as he had requested you to when you took it away? Please answer.

C. K. WEATHERFORD, Esq., for the complainant: Objected to for the reason he just answered it.

A. I think I have answered that question if I understand it.

X Q. I am asking whether you intended to hold the note as Foster wanted you to hold it. Will you please state that?

A. I will answer that I intended to hold the note for the purpose of evidence, as I was satisfied at the time that notes were being made to suit the occasion. I expected to use that note as evidence on my own behalf if I ever had to use it.

X Q. Then at that time you were satisfied that Mr. Foster wasn't dealing squarely, were you?

A. I had a very strong suspicion of it; yes, sir.

711 X Q. And at the same time you offered to assist him?

A. I offered to assist him in taking up the farmers' paper, and he didn't offer to furnish me money.

X Q. You think he could take up the paper without money?

A. No, sir.

X Q. How were you to assist him, then? By speaking well of him?

A. My proposition was that if he could furnish the money I could take up his paper at a large discount, and enable him, I thought, to go on with his business, as he had represented that he was only $10,000 behind, and I couldn't see if he was only $10,000 behind why that should stop hom from going on with his business.

X Q. That was your proposition to him, was it?

A. I made that proposition to Mr. Foster myself.

X Q. Were you to buy it in his name or your name—buy Foster's paper in his name or your name?

A. Nothing said about that. If I wanted to buy it in my name I would want to buy it with my money.

X Q. Why couldn't Foster buy it in as well as you if he had the money?

C. K. WEATHERFORD, Esq., for the complainant: Objected to; not cross-examination.

A. They would want him to pay the face of it, and an outside party could get it for less.

X Q. Then you were willing to act as his agent in buying in his own paper at a large discount?

A. Provided he furnished the money.

X Q. That was your proposition?

A. That was my proposition.

X Q. And not disclose your agency?

712 A. Nothing said about that.

X Q. That was the understanding—you shouldn't disclose it?

A. No, sir; nothing said about it by either party. I merely made the proposition to see—satisfy myself—whether he did intend to take up his paper and go on with his business. That is why I made the proposition.

X Q. Was that before or after he gave you this note?

A. It was after.

X Q. Did you intend to perform that proposition if he accepted of it, or was that for the purpose of furnishing evidence?

A. Well, I can't say but what if he had accepted of it I would have done the best I could for him. I felt friendly towards him, Foster.

X Q. Then that proposition was made in good faith?

A. Made in good faith.

X Q. But you didn't take the note in good faith?

A. No, sir; I didn't, because I had corresponded with those parties in Portland to satisfy myself.

X Q. You didn't hold it in good faith, then?

A. Only for the purposes mentioned.

X Q. Did you return it in good faith?

A. Well, I think I did return it in good faith.

X Q. Now, Mr. Goltra, if it was your design to take that note for the purpose of furnishing evidence why didn't you keep it until the trial came —, so that you could show it?

A. Well, I thought I had it a sufficient length of time—had evidence that it was in my possession and showed on his books, etc.

X Q. Have you got a copy of the note?

A. No, sir.

713 X Q. The books are offered in evidence. Will you please turn to the books and find that entry?

A. I have never handled the books. I presume it can be found.

X Q. Your attorneys are here and the books are here before the referee and you can take them and examine them and see if there is any entry on the books now that you saw put there. The books themselves are offered in evidence.

A. I think it can be found.

X Q. You say it is there. I ask you or your attorneys, who are present, to furnish or turn to the book and furnish the book and the page to the master. Refer to it so that he can find it.

C. K. WEATHERFORD, Esq., for the plaintiff: The books are offered in evidence and they themselves show that state of facts and show whether or not the entry is there, and Judge Flinn can examine them for himself at his leisure.

L. FLINN, Esq., for the defendants: Well, I know there is no such statement in there, and that it can't be found, and therefore I have asked the question of Mr. Goltra to turn to that entry, if he can find it, which he says he saw made or have his attorneys turn to it, and we request them again to turn to that entry which Mr. Goltra testified he saw made.

C. K. WEATHERFORD, Esq., for the plaintiff: If Judge Flinn knows it is not there I presume he has looked for it and understands the

condition of the books, and if he does it is unnecessary to take up the time of the court at the present time to examine them.

WITNESS: I saw it entered on the books.

714 X Q. The question is, Are you willing to turn to the books or have your attorneys do so? It is not what you saw now.

A. I am.

X Q. Please do so.

EXAMINER: Which book is it?

A. I couldn't give the number of the book, but it is a journal used at that time on his desk in his business. I say "journal;" I think it is a journal; it is common to make such an entry in a journal.

X Q. Did you see what was written in the book and did you read it?

A. I saw him write my name and put the amount down in figures.

X Q. What else?

A. That is all.

X Q. Just your name and the amount down in figures?

A. That is all I recollect; there might have been something else.

X Q. You say the note was entered in the journal?

A. I said the amount of the note. I didn't mean to say the note itself was entered, but the amount of the note.

X Q. Was a memorandum of the note entered?

A. I would take that as a memorandum of the note.

X Q. Was it under bills payable of bills receivable?

A. I wouldn't say that.

X Q. How far were you from the desk?

A. Well, I was as close as I am to you.

X Q. Where Robert Foster was sitting?

A. I was sitting at one end of the desk and he was writing on the side of it.

X Q. Please estimate in distance.

A. I think I wasn't over 4 feet from him.

715 X Q. Did you make any memorandum of the note at all yourself?

A. I did not; I had the record of the note as the previous note this was duplicate of.

X Q. Did you have the previous note there?

A. No, sir.

X Q. Did you have a copy of it?

A. I had the amount, not a copy.

X Q. Then it was duplicate as to the amount?

A. Duplicate as to the amount.

X Q. Do you remember the date of the previous note?

A. I don't recollect; it was given some time in the spring.

X Q. Do you remember the reading of the previous note—the wording?

A. It was a common note of hand.

X Q. Do you remember the wording of the previous note?

A. I don't, entirely.

X Q. Did you at that time?

A. I don't know that I did; I was using printed notes, and I know generally what a printed note is.

X Q. Do you know whether he used the same kind of note both years—same kind of printed note?

A. I don't; only the amount.

X Q. Then when you say it was a duplicate you mean simply that it was for the same amount, and not that it was an exact copy?

A. I mean that it was for the same amount.

X Q. That is what you mean by duplicate, is it?

A. That is what I mean by duplicate; duplicate of the amount in note form.

X Q. You don't mean that it was exact copy?

A. I won't say it was an exact copy; it was a duplicate of the amount in note form.

716 X Q. When was this note payable—this $2,700 note—that note that you say you took?

A. Well, I can't say, sir, when it was payable. It had been paid, though; it had been paid off, but I can't say the date it was due.

X Q. This note that you took, when was that dated—not the one that you had paid, but the one that you took—this $2,700 note which you say was duplicate—when was that dated?

A. It was made to date back and made payable the same date as the other note, but what it was I couldn't tell you.

X Q. Did you have the note here?

A. No; I didn't have it.

X Q. Did you know when the other was payable?

A. I did at the time, but I don't know now.

X Q. How did you know it was the same time if you didn't have it there nor a copy of it?

A. I had it in my books.

X Q. Did you have your books there?

A. No.

X Q. Then you didn't refer to the books?

A. No.

X Q. Then how did you know?

A. I don't say that I did know positively the date it was made payable.

X Q. How do you know that this was made payable the same as the other—when the other was payable?

A. I don't know that it was exactly the same date, but it was intended to be by Mr. Foster himself.

X Q. How do you know that?

717 A. Because it was their suggestion.

X Q. Did he say he made it payable the same day?

A. He said he would duplicate the other note, and started in to do so. I supposed he just duplicated the other note in time, and I know it was dated back.

X Q. As you understand duplicate, it simply means the duplicate of the amount?

A. Duplicated the amount of the note; yes.

X Q. Just of the amount. Then, as to the time when it was made payable, that you don't remember certainly?

A. No; I don't—the time the other was made payable.

X Q. As a matter of fact, did you read this note and see that it was past due when you took it?

A. Yes, sir.

X Q. Was it past due?

A. Yes, sir.

X Q. When you took this $2,700 note?

A. Yes, sir.

X Q. You read it over carefully, did you?

A. I read it enough to know that it was past due. It was a duplicate of the terms of the other note; might not have been the specific words.

X Q. Are you sure it was past due? Did you read it enough for that?

A. I read it enough for that.

X Q. How long past due was it?

A. I don't know.

X Q. Did you give Mr. Foster to understand that you would assist him in that way when you took the note away?

A. I don't know but what I did by accepting the note on those terms.

718 X Q. Did you say anything at all to him, whether you would or would not accept of it?

A. Well, I evidently did accept of it, at all events.

X Q. Do you remember whether you said anything to him or not?

A. I suppose I did. There was considerable conversation back and forth. I couldn't say it all.

X Q. Did he undertake to tell you the situation of his affairs at that time?

A. He had told me different times——

X Q. I am asking at that time. Did he undertake at that time to tell you the condition of his affairs?

A. Well, in part he did.

X Q. And the amount of this flour and the amount of advances against it?

A. Yes.

X Q. He thought it would sell for a good deal more?

A. He thought it would sell for more. That was the idea he tried to convey to me—that it would sell for more.

X Q. More than the advances?

A. More than the advances, and more than my note that was then not due—twenty-four hundred and sixty-odd dollars, I think it was.

X Q. That note of $2,400 was to be paid if the flour sold for enough?

A. That note was given on 30 days.

X Q. I wasn't asking about that. I just asked if it was to be paid out of the proceeds of the flour if the flour brought enough.

A. Yes, sir; certainly it was.

X Q. And the way you understand it—after that was paid, then, if there was any surplus, you were to hold this note against it for Foster's benifit?

719 X Q. And you took the note on those terms and went off with it?

A. Yes.

X Q. And you held it, as you have testified, until you were satisfied that the flour wouldn't sell for enough to pay you?

A. I was satisfied of that when I took the note.

X Q. Then your evidence that you have given in that respect is a mistake—that you held it until you were satisfied that the flour wouldn't sell for enough?

A. I have before stated I was satisfied when I took the note.

X Q. I ask you if you didn't testify in substance this afternoon that you returned it because you became satisfied that the flour wouldn't bring enough to pay you over and above the advances?

A. I returned it because I was satisfied of that.

X Q. And you so testified this afternoon?

A. I said I was so satisfied.

X Q. You so testified?

A. I so testified that I was satisfied.

X Q. Didn't you testify that you returned it because you were satisfied that the flour wouldn't bring more than the advances?

A. At all events I was satisfied.

X Q. I am asking you now how you testified—your recollection on that subject, if you have any.

C. K. WEATHERFORD, Esq., for the plaintiff: I object to that cross-examination because he has answered those questions half a dozen times.

WITNESS: The idea I intended to convey was that I was satisfied there were no proceeds for the note to cover.

720 X Q. I was asking as to your examination—as to how you did testify.

A. I think that is what I did testify to.

X Q. You don't think, then, that you testified you returned the note because you were satisfied?

A. I don't think I used the word "because."

X Q. Will you now please turn to the journal of 1884 kept by Mr. Foster—February, 1884,—well, the journal kept by Mr. Foster in 1884, and show the entry which you say you saw made?

A. I think I qualified that statement by stating that I wasn't sure that the journal—it was a book that laid on the desk that I supposed it was a journal. I didn't notice the book the entry was in.

X Q. You may state whether there is any of the books offered in evidence here, as you understand it, containing entries made after January 1st, 1884, by James H. Foster and Company concerning their business.

A. I saw him make the entry of the duplicate note, as I have termed it, on some book. I was standing at the end of the desk and

he was over there, and as a man generally makes his entries on the journal first I supposed it was on the journal; I didn't notice.

X Q. Did Mr. Foster ever make to you more than one note of $2,700 or thereabouts?

A. Yes, sir.

X Q. When was the other?

A. It was a year before the failure; I think it was some time in the spring.

721 X Q. Just one — before?

A. I think it was one year before; I won't be certain. It was a note given for wheat.

X Q. Note given for wheat?

A. Yes, sir; I think it was something over $2,700—twenty-seven hundred and about fifty dollars.

X Q. I ask if he ever made more than that one?

A. Yes, sir.

X Q. More than that one that was given the year before and the one that you claim soon after the failure?

A. I call that two.

X Q. Did he ever make you any others?

A. No, sir; not of that amount.

X Q. Or about that amount within a few dollars?

A. No, sir.

X Q. That you paid—that one you say you paid—the one which was given the year before the failure?

A. He paid it.

X Q. He paid it to you?

A. Yes; it was a note given to me for wheat.

X Q. Do you recollect when he paid it?

A. I don't exactly; it was in the fall some time.

X Q. The fall before the failure?

A. Yes; the fall before the failure.

X Q. It had run a year or so?

A. Yes, sir; might not have run a year. I don't say it run for a year; might have run over.

722 X Q. You may examine Exhibit G, on page 92, entry made, dated —, or entry dated October 2nd, 1883, and state if that is the note that Mr. Foster paid.

(Witness examine- the entry.)

A. That was the amount of the note that he paid.

X Q. Was that its date?

A. I think that date has been changed. I am not certain. It now occurs to me that the wheat—the note that I had for wheat was given in the spring, but of that I won't be certain.

X Q. That is the amount of the note that you say he paid?

A. Yes, sir.

X Q. When did he pay it?

A. He paid it in the fall of '83 some time.

X Q. It had been running about a year—or the spring before anyway?

A. I don't think it had run a year; I won't be sure.

X Q. Your recollection is it was given in the spring?

A. That is my recollection—that I sold that crop of wheat some time in the spring.

X Q. What time in the fall was it paid?

A. It was after he had ground some of the crop—was shipping flour. I couldn't give you the date of the payment.

X Q. Page 92 purports to contain a list of notes that he had given. You may examine it and see if there is any others there that correspond to any one given to you in the spring.

(Witness examines and says:)

A. There is a note $2,460.15, and the other is $2,749.66. That note is dated April 2nd. It doesn't there give the year, but that is the note that was given, as I understand his books, to
723 duplicate, as I call it, the other note. That is the amount.

X Q. This entry of a note on page 92, Exhibit G, dated April 2nd, 1883, for $2,749.66 is the note that he paid you, is it not?

A. He paid me a note of that amount.

X Q. Is that the date of the note that he paid you?

A. I think it is.

X Q. As you now recollect it?

A. As I now recollect it, I sold that wheat some time in the spring, and probably about the first of April.

X Q. Well, now, you may state if the note that is crossed out isn't on the wrong side of the ledger to be due from Foster to you for the same amount. Entry appears to be October, although there is a part of an April written over it.

A. April 2nd I think is—the dates above it is July 12 and 28, and I would read that April 2nd, and the way I understand this is, he intended to charge me with that note.

X Q. But put it on the wrong side of the ledger, as though it was due from you to him. Is that it?

A. That is the way he looked at it, I suppose. I was holding a note of that much that he claimed.

X Q. Now the $2,400 note is entered regularly here, isn't it, on this page 92?

A. I take it so.

X Q. That he owed you? That is the last entry there?

A. That is the last entry there?

X Q. When was that given?

C. K. WEATHERFORD, Esq., for the plaintiff: I object to all
724 this testimony for the reason that this witness is not keeper of these books, doesn't show that he is the book-keeper, doesn't seem to know, says he doesn't know, anything about the books kept by Mr. Foster—never saw them before.

WITNESS: I don't say I never saw them, but I never examined them. I don't mean to say I never saw them before, because I have

been in his office before. I think that is the proper date of it—January 8th, 1884, for 30 days. That was given for wheat.

X Q. Was this entry there: October 2nd, W. H. Goltra; but on the other side of the ledger, $2,749.66, the entry that you saw Robert make?

A. I think it is.

X Q. You think it is the same one?

A. I think it is; I am not positive. It was made about in that form, and intended—dated the same as the note is there, April 2nd, and for the same amount.

X Q. Were you near enough to see Robert distinctly—Robert Foster—when he wrote it?

A. I was.

X Q. Do you know whether any of those entries following after this were made at the time that he made the entry?

A. I don't, for I didn't examine the books.

X Q. You say you saw him write your name?

A. I saw him write what I supposed was my name at the time he wrote it and put down the amount—charged me, as I took it, at the time with the note.

725–727 X Q. And you think that is the entry?

A. I think that is the entry.

X Q. But you don't remember whether any of those subsequent entries were made then or not?

A. Following?

X Q. Yes.

C. K. WEATHERFORD, Esq., for the plaintiff: Same objection.

A. I don't think there was.

X Q. You think they were all made since?

A. I think they were all made since.

X Q. You didn't notice any entries after that?

A. I didn't notice any below what he was writing.

X Q. You don't know anything about that?

A. No.

X Q. Do you know whether it is a journal or ledger?

A. Well, I should call this the ledger.

X Q. Then this is not the entry that you saw made on the journal?

A. Well, I qualified that statement by saying that I wasn't sure that it was a journal, what is called a day-book journal or the journal day-book. That is what I supposed they were keeping. Maybe it is because I kept mine that way. I meant to state that he made the entry of the note on the books.

X Q. On the books or on a book?

A. On a book.

X Q. Do you know whether that book was their regular account book or not for the mill?

A. I don't. I supposed it was, as the books were lying there.

728 X Q. I asked what you knew

A. That is as near as I can get to it.

X Q. Who was present when you gave the note back to Robert Foster?

A. I don't remember that there was any one present.

X Q. Do you keep any books yourself?

A. Yes, sir.

X Q. Did you make an entry of the note on your books?

A. No, sir.

X Q. Made no entry of it at all?

A. No, sir.

X Q. You didn't consider it part of your business?

A. My son was keeping the books at the time.

X Q. Did he enter it?

A. No, sir.

X Q. Or did you request anybody to enter it?

A. He found the note in the safe.

X Q. I am asking about the entries, not what he found.

A. My son was keeping the books at the time, and he found the note in the safe, and made the remark—says he: "I thought that this note was paid."

X Q. I just asked you if you requested him to enter the second note that you took.

A. I didn't; on the contrary, I told him not to enter it.

Redirect.

Redirect examination by C. K. WEATHERFORD, Esq., for the plaintiff:

X Q. At whose suggestion was that note given after the failure or transfer of the property from Foster to Crawford, yours or Foster's?

L. FLINN, Esq., for the defendants: That is objected to be-
729 cause the witness has already *jected to because the witness has already* testified fully on that subject, and it is not rebuttal; immaterial and incompetent.

A. There was considerable conversation between Robert Foster, J. H. Foster, and myself as to the best way to manage this, and I couldn't say now whether Robert Foster suggested this note or his father.

C. K. WEATHERFORD, Esq., for the plaintiff: I desire to call attention to page 92, in the account of W. H. Goltra with the firm of J. H. Foster & Co., as well as journal marked on the back of it, from July 25th, '82, to December 6, '83, on pages 394 and 543, and offer the same in testimony, and I desire to call attention to the whole of page 92, of Exhibit G of bills payable.

L. FLINN, Esq., for the defendants: It is objected to for the reason it is incompetent, irrelevant, and immaterial, and it is not rebuttal.

This book is received and marked "Complainant's Exhibit P."

(Signed) W. H. GOLTRA.

730 *Testimony of L. E. Gray.*

L. E. GRAY, being called and sworn as a witness on behalf of plaintiff in rebuttal, testifies as follows:

Direct examination by C. K. WEATHERFORD, Esq., for the plaintiffs:

Q. What is your name, age, residence, and occupation?

A. L. E. Gray; 37; secretary and plumber of the Albany water works; residence, Albany.

Q. What connection, if any, are you to J. H. Foster, of Albany?

A. He was my brother-in-law by his first wife.

Q. Have you been in his employ the last few years?

A. Yes, sir; up to the time of his failure.

Q. What was your business under Mr. Foster?

A. Well, worked considerable in the mill, and, after starting in the water works, went on that a great portion of the time.

Q. The same business you are now engaged in?

A. Yes, sir; with the exception I didn't have anything to do with the books.

Q. Under him?

A. No.

Q. You have now?

A. I have now.

Q. When did you commence handling the books?

A. After Mr. Crawford took charge. I don't recollect whether it was the first month or afterwards.

Q. Do you remember when Mr. Crawford employed you?

A. There was nothing said right at the time for a few days, but then I just—he was a partner, and I had no—he was a part-
731 ner in the water works at the time, so I had no doubts about the pay.

Q. Nothing was said at all about it to you; just went right along?

A. Just went right along at the time.

Q. Do you collect the moneys due the water company?

A. I do at present.

Q. How long have you collected the money for the water company?

A. Well, soon after Mr. Crawford took charge.

Q. Have you kept the books ever since you collected the water rents?

A. The water books?

Q. Do you know where they are?

A. They are at home.

Q. Were they kept in the same lot of books that was here exhibited?

A. No.

Q. Were those books kept in the Magnolia mill office?

A. Yes, sir.

Q. Before and since the transfer to Crawford?

A. Yes; I don't know how they were before. I suppose they all came in there together before. I don't know anything about the books before.

Q. They have been since?

A. They have been since.

Q. What are your duties as plumber and keeper of the water works?

L. FLINN, Esq., for the defendants: I object; it is immaterial and irrelevant and incompetent; not rebuttal.

A. Well, it is to lay water pipe and to keep accounts and collect the same; look after pumps; sometimes go and dig ditches.

Q. Under whose direction do you make those improvements?

732 L. FLINN, Esq., for defendants: Same objection; it is not in rebuttal.

Q. And do that work?

L. FLINN, Esq., for the defendants: Irrelevant and incompetent.

A. J. A. Crawford.

Q. Does J. H. Foster oversee the work or has he overseen the work of repairing and extending the water works the last two years?

L. FLINN, Esq., for the defendants: Same objection.

A. Not to my knowledge. If he has I have got my instructions always through Mr. Crawford.

Q. What do you do with the money you collected for the rents?

L. FLINN, Esq., for the defendants: Same objection.

A. Pay it subject to Mr. Crawford's orders.

Q. How much have you been paying monthly to J. H. Foster?

L. FLINN, Esq., for the defendants: Same objection.

A. I couldn't state positively.

Q. You have been paying some, have you?

L. FLINN, Esq., for the defendants: Same objection.

A. I may have paid some; I don't know what. I paid several bills sometimes.

Q. Pay as much as $150 a month?

A. I would think not.

Q. $100?

733 A. I think not.

Q. $75?

A. I think not.

Q. $25?

A. Might have.

Q. As much as $50?

A. I don't know the exact amount at present; I don't recollect.

Q. Has he an account in the water books?

L. FLINN, Esq., for the defendants: I object for the same reason as above; the books themselves are the best evidence.

A. I don't recollect.
Q. You are the keeper of the books, are you not?
A. Yes, sir.
Q. If you paid him any money did you charge him with it in the books?

L. FLINN, Esq., for the defendants: Same objection. Note the same objection to all those questions.

A. It wouldn't be likely to go on to the water books if I had.
Q. What would it go on to?
A. It would simply be a cash account.
Q. Do you keep a cash account of the water works?
A. I keep a cash account of all I receive and to whom I turn it over, so as to protect myself.
Q. Have you got an account on that book, called your cash book, against J. H. Foster, showing the amount of money you paid him?

L. FLINN, Esq., for the defendants: Same objection.

734 Q. The last two years?
A. I don't understand the question. If I paid him any, it would show if I paid him any.
Q. Do you know whether you did pay him any money?
A. I may have paid him some.
Q. What do you know about it?

L. FLINN, Esq., for the defendants: Same objection to each question.

A. I don't understand the question.
Q. What do you know about paying him money?
A. The same as any other account.
GEO. H. DURHAM, Esq., examiner: The question is, Have you paid him? Do you know whether you have paid him any or not?
A. Well, I couldn't say positively that I had nor that I hadn't.

C. K. WEATHERFORD, Esq., for the plaintiff:

Q. Haven't you turned over to him during the last two years cash out of the collections that you receive from the water rents about $75 to $100 per month?
A. No, sir.
Q. Have you turned over to him any of the money that you collected on water rents?

L. FLINN, Esq., for the defendants: Note those objections right along.

A. When I paid him any money I don't know that it would be particularly out of the water rents. I collected other rents as well.
Q. Out of the money that you have received in the course of your employment collecting rents—water rents and other rents for
735 Crawford—have you paid Foster any of that money?
A. Perhaps I have.
Q. Well, do you know whether you have or not?

A. I think I have some.
Q. About how much?
A. I have no idea.
Q. Did you charge him with the money that you paid him on the books; if so, what books?

L. FLINN, Esq., for the defendants: Note the same objections.

A. Well, it would be the book that those transactions were put down in.
GEO. H. DURHAM, Esq., examiner: First, did you charge him?
A. If I paid him any money I did.

C. K. WEATHERFORD, Esq., for the plaintiff:

Q. You say you paid him money. Now, will you please state whether you charged him; if so, on what book?

L. FLINN, Esq., for the defendants: Same objection.

A. I said if I paid him; the transactions that I have paid money I have charged.
GEO. H. DURHAM, Esq., examiner: If you charged him, on what book did you charge him? You haven't answered that branch of the question.
A. There is what I call a cash book, and then there is water books.

C. K. WEATHERFORD, Esq., for the plaintiff:

Q. Is the cash book separate and distinct from the water books?

L. FLINN, Esq., for the defendants: Same objection.

A. One is.
736 Q. Where is that cash book?
A. Mr. Crawford has that, I suppose, in his office.
Q. Have you kept it?
A. Yes, sir.
Q. Have you a cash book in connection with the water-work system?
A. I have a cash account.
Q. Does that cash account show to whom you paid money?
A. It shoes what I done with the money.
Q. Does it show the amount that you collected from water rents that you paid to Foster?

L. FLINN, Esq., for the defendants: Same objection.

A. If I paid him it will.
Q. Will you bring that book down before the master?
A. I have no authority.
Q. For examination.

L. FLINN, Esq., for the defendants: Same objection.

A. I have no authority to take the books away from the office.

Adjourned till March 12th, 1887, at 9.30 o'clock a. m.

MARCH 12TH, 1887—9.30 o'clock a. m.

Parties met pursuant to adjournment—present, same as before—whereupon the following proceedings were had:

(Examination of L. E. GRAY resumed.)

By Mr. WOLVERTON, for the plaintiff:

Q. You have the books of Mr. Crawford here now. Please turn to the account of Mr. Foster and state what moneys have been paid to Mr. Foster by Mr. Crawford which you received as rents from the water works.

737 L. FLINN, Esq., for the defendants: That is objected to. It is immaterial and irrelevant and incompetent. It does not appear that there was a separate account kept as to the moneys received from the water works and from other sources.

A. Well, as I understand it, there is no account directly from the water works against J. H. Foster, but there is money that has been paid, but it is out of a general fund; not out of any specific fund.

Q. What is that general fund composed of?

L. FLINN, Esq., for the defendants: That is objected to as immaterial and incompetent and irrelevant, and it is not in rebuttal of anything offered by the defendant. Same objection to all questions of this character following.

A. Well, some of it Mr. Crawford furnished himself. Some of it is money received on mill accounts, some of it from brick rents, some of it from water works; may have been others. I don't recollect. I wish to make an explanation here now. I have brought the books, and you can see them and pick out the accounts. Here in this old book there is an account here and moneys paid which are charged, I should say, to J. H. Foster, which was money paid by Mr. Crawford—that account—for wheat and was charged to Foster, but it was to pay for the wheat that was spoken of by other witnesses. I refer to page 38 of the book. Then this account is carried to page 161, and it is principally—it was put in by another bookkeeper, but it is principally mill feed flour; and then this here account is carried forward to another book. Here it is also on page 38 in the new ledger, I would call it. It is here shown feed and flour and cash, and is specified all the way through.

738 Q. Are those all the ledger accounts of Mr. Foster?

A. No, sir; there is another one; there is one more.

L. FLINN, Esq., for the defendants: Same objection.

Q. Page 13 of what year?

A. At the present time for water-works ledger. Here is the debtor and here is the credit side.

Q. I see that is noted carried to mill book; what book do you have reference to?

A. This one.

Q. The one you just showed me?

A. Yes; there is the amount right there; and there is the credit.

Q. Just turn now to the account commencing with February, 1884, with Mr. Foster.

A. I haven't got any of it, unless it is on there; no, I have no account whatever; for three accounts is all I have got and shows day and dates.

Q. When were you instructed to credit Mr. Foster every month with $75.00?

A. I couldn't state the time.

Q. Was it soon after the transfer in 1884—February?

A. I couldn't state; I don't recollect.

Q. The first credit you have got of Foster on these books would be September 1st, 1885, wouldn't it?

A. Yes, sir; that is the first that is there.

Q. The ledger account referred to on page 38 of the old book by you contains an account with Foster, does it?

L. FLINN, Esq., for the defendants: Objected to because the page itself which is present will show what it is, and it is the best
739 evidence; and it doesn't appear that that account was made by this witness or kept by him.

A. There is an account standing here on the book against J. H. Foster on page 38.

Q. I see on that page one item: "To cash $200.00;" another item: "February 28th, to cash, Pugh, $400.00;" and another item: "27, to cash, Pugh, $136.00;" can you explain what those items were for?

A. Those were notes held by Mr. Pugh against Mr. Foster with Mr. Crawford's security, I think. I won't be positive. Anyhow, it was something of the kind for wheat. I won't be positive that it was security, but anyhow it was for wheat which he was to buy.

Q. Which Mr. Crawford was to buy?

A. Yes.

Q. Was notes given after the transfer or before?

A. I couldn't say.

Q. But it was given for the wheat which Mr. Crawford was to buy?

A. Yes, sir.

Q. And save Mr. Foster whole from the purchase of the same?

A. I don't understand the question?

Q. He was to buy that wheat and secure Mr. Foster against the purchase of the same, was he?

A. I don't know how to answer that.

Q. That wheat was a part of the wheat that was in the mill at the time of the failure, and was purchased by Mr. Crawford?

A. That is my understanding.

Q. Then Mr. Crawford gave his note for it at the time he purchased it and paid off the notes afterwards?

A. I don't know when the notes was given or anything about that, only after they were paid the cash that was paid was
740 charged to Foster on this book

Q. There appears a credit on that page of $760. Was that paid in cash?

A. That there contains notes and accounts paid by J. A. Crawford; that was this here maybe that you are speaking about.

Q. The same that I am speaking about now?

A. Yes; maybe one or two smaller ones there to make up the amount.

Q. He first charges him with the notes and accounts and then credits him with them, does he?

A. Well, that is the way it was done. I think the intention of Mr. Crawford at the time of telling me to put it down was to simply keep a memorandum of the money that he paid on notes or for wheat; but when it got onto the day book it naturally went to the ledger.

Q. I would suppose that.

A. I credited there simply to balance this account there and carry the balance forward to the other book.

Q. Turn to page 161 of that ledger. Now, state what balance is carried forward.

A. $26.60.

Q. Does Mr. Crawford hold those notes and accounts paid by him on that wheat purchased?

A. I don't know.

Q. Against Mr. Foster yet?

A. I don't know. I don't recollect of ever seeing the notes.

Q. Who ordered you to place those charges there to Mr. Foster? Did you do it of your own accord?

741 A. Some of them was copied from what we call the mill blotter and some was put there by instruction from Mr. Crawford.

Q. Will you turn to the mill blotter and show the original entries?

A. I didn't bring the blotters. I brought what I understood you wanted—the ledger accounts.

Q. The account referred to in old ledger, on pages 38 and 161, is all the account with Mr. Foster until this account is opened in the new ledger, on page 38, is it not?

A. No, sir; there is something in the water book there.

Q. Which is the water book?

(Witness points to it.)

Q. Who ordered you to charge Foster with $75 per month, commencing September 1st, 1885, as shown on the water book ledger, page 13?

A. You mean charged?

Q. I mean credit.

A. Mr. Crawford.

Q. Is that the first that you have given him credit for? I mean as a salary of $75 per month on the books.

A. Whatever is on the books is all that I know anything of.

Q. Well, I see that that is the first credit on the books of $75. Is

that the first that you have given him under Mr. Crawford's directions? You can see the book for yourself.

A. Yes, sir.

Q. What reason did Mr. Crawford give you for making the credit when he ordered you to make it?

742 L. FLINN, Esq., for the defendants: That is objected to as immaterial and irrelevant and incompetent and not in rebuttal.

A. I don't know of any stated reason, only that he said that he was in his employ and to give him credit for $75 a month.

Q. Did you know that Mr. Foster was in Mr. Crawford's employ before that date?

L. FLINN, Esq., for the defendants: Same objection on all those questions.

Q. September 1st, 1885?

A I knew that J. H. Foster's books—J. H. Foster & Co.'s books—were given to him for straightening up, but on what terms I didn't know.

Q. Gave to who for straightening up?

A. J. H. Foster.

Q. Who gave them to J. H. Foster?

A. Mr. Crawford.

Q. When?

A. I couldn't state.

Q. Do you keep all the accounts of rents of Mr. Crawford's?

A. No, sir.

Q. Who keeps the rest of the accounts?

A. I don't know.

Q. What rents do you collect and keep account of?

A. The brick building known as the Foster block and the water rents.

Q. How long has Mr. Foster been in the employ of Crawford?

A. I don't know.

743 Q. Was he in the employ of Crawford soon after the transfer?

A. I couldn't state positively.

Q. Did you see him about the premises?

A. He was.

Q. What was he doing?

A. I never paid any attention.

Q. Was he in the mill office?

A. Yes, sir.

Q. As often as he was before?

A. About, for awhile.

Q. You didn't see much difference?

A. I didn't see much difference.

Q. Went the same as it did before?

A. He might not have been there quite as much.

Q. Did Mr. Foster collect the accounts there and stay in the mill office and continue the business?

A. I didn't see him. I didn't know of it.

Q. Were you not in the mill office frequently?

A. Yes, sir.

Q. Wasn't it your business to go there and report the rents collected, etc., or did you report, or did you keep an account yourself?

A. I kept an account myself or else give it to Mr. Crawford himself.

Q. Did Mr. Crawford tell you how much Mr. Foster was getting per month for his services?

A. The books will show all I know.

L. FLINN, Esq., for the defendants: Same objection to that question also.

744 Q. The different sums of cash paid to Mr. Foster, as shown on the books, were they always paid by Mr. Crawford's order or did you hand them to him by Mr. Foster's request?

A. On Mr. Crawford's order.

Q. Always?

A. Yes. Some of those I didn't give him at all. Mr. Crawford handed them to him himself—simply told me to charge it up.

Q. Enter it on the books?

A. Yes.

Q. Do you know what interest Mr. Foster has in the water works now?

L. FLINN, Esq.: That is objected to on the same ground; that it is opening the question they had to make in the first place.

A. I am not aware that he does own any interest whatever.

L. FLINN, Esq., for the defendants: The counsel for defendants ask the master to make a certified copy of each page of those books referred to, numbering the pages, and attaching them to this deposition.

Mr. WOLVERTON, for the plaintiffs: One more question. Is Mr. Foster charged any place on the books that you know of with house rent?

L. FLINN, Esq., for the defendants: That is objected to; not rebuttal. It is immaterial, incompetent, and irrelevant.

A. Not that I am aware of.

(Signed) L. E. GRAY.

Mr. WOLVERTON, Esq., for the plaintiff: Plaintiff here closes his testimony, so far as testimony is concerned, with the under-
745 standing that either party may offer further documentary evidence at the hearing.

746 In the Circuit Court of the United States for the District of Oregon.

CHARLES A. NEAL, Complainant,
vs.
JAMES H. FOSTER *et al.*, Defendants.

Testimony of John O. Goltra, a witness on behalf of the complainant in the above-entitled cause, called, sworn, and examined, by consent of the parties to said cause, before Geo. H. Durham, master, with H. H. Parker, stenographer, at Portland, Oregon, on Monday, April 11, 1887, when were present C. E. S. Wood, of counsel for complainant, and E. C. Bronaugh, of counsel for defendants.

J. O. Goltra.

Direct examination:

Q. State your name and age.

A. J. O. Goltra; twenty-one.

Q. You are the son of W. H. Goltra, who has testified as a witness in this case, are you not?

A. Yes.

Q. State as briefly as you can what you know, of your knowledge, concerning certain notes held by your father, W. H. Goltra, given to him by Mr. James H. Foster, a party to this suit.

A. In April, 1883, Mr. Foster executed a note to W. H. Goltra for, I think, $2,700 and about fifty dollars. I saw that note during the summer of 1883, as I was keeping books for my father at that time, and during the holidays of 1883—the last week of
747 December—that note was not among, was not in the pouch where my father kept his private notes, and on the first of January I entered all his private business on the store books. That note was not in his pouch at the time. I handled all his notes myself. In January he had another note executed to him by Mr. Foster for $2,460. In February, a few days after the failure, I was in Albany and heard of the failure soon after arriving at the depot. On going to the store father was out. I asked the clerk for the keys to the safe, and on examining his notes at the safe I found that not only the note of January was there, but the note given in April of the previous year was there, being the note that was not there in the holidays.

Q. Which one of these two notes that you have spoken of was the one that was sued on in the State court?

A. The one given in January for $2,460.

Q. Do you know what was done with the other note?

A. Only upon my father's word. I would like to add that the other note was not there when I went to Albany later in the spring. I examined his notes again on the first of May and it was not there at that time.

Cross X.

Cross-examination :

Q. Which note do you mean was not there?
A. The $2,460 note.
Q. Was the $2,400 note there at that time?
A. It was.

748 Q. Do I understand you to say that this $2,750 note that was not there in the holidays, but was there subsequently, was the same note that was given in April, 1883?

A. It professed to have been the same note—was for the same amount, and dated April 2, 1883.
Q. Did you examine that note closely?
A. Yes, sir.
Q. Was the body of the note and the signature in the same handwriting?
A. It is my memory that it was not.
Q. In whose handwriting were they, respectively, if you know?
A. The body of the note was in R. A. Foster's handwriting, and the signature was by J. H. Foster.
Q. State whether the note that was executed on April 2, 1883, was in the handwriting of Robert Foster and the signature the signature of James H. Foster.
A. I could not state positively. The signature, I am quite certain, was in Mr. Foster's hand; but as to the body of the note, I do not remember.
Q. How often did you see that note while it was in your father's possession?
A. Do you mean the note that was given April 2, 1883? I must have read it three or four times. I handled it, I suppose, not less than fifteen or twenty.
Q. Then how is it that you are not now able to state whether the body of that note and the signature were in the same handwriting when you claim to be able to state that the note you found there after the holidays for the same amount was—the body of it—in the handwriting of Robert Foster and the signature that of James H. Foster?

749 A. At the time the note of April was in my father's possession there was nothing to make me take any particular notice of the handwriting. After the failure, when I was in Albany, in February, I noticed the notes and made memorandums of the facts in regard to them—as to what the writing was and the dates. I had not done this in regard to the notes during the previous summer, not expecting to be called on at any future time in regard to them.
Q. Where is that memorandum now?
A. I could not say. It has been mislaid within the last six months. I had the memorandum in June.
Q. What caused you to make any such memorandum as that?
A. For the reason that I supposed that possibly I might at some future time be asked as to my knowledge of the notes.

Q. Did you and your father talk it over about that time?

A. In February he told me, on my remarking to him that I thought the $2,750 note had been paid, that Mr. Foster had duplicated the note in order to cover certain proceeds of flour said by Mr. Foster to be in the hands of the Bank of British Columbia and the proceeds of which he had assigned to him to cover the $2,460 note and the $2,750 note.

Q. Who, if any one, was present when he told you any such thing as that?

A. I think L. W. Deyoe was in the office, if any one.

Q. Was he close enough to hear the conversation?

A. He was about ten feet distant, sitting at the stove, if he was there. I do not think he heard the conversation.

750 Q. Where is he now?

A. He is an agricultural-implement merchant in Albany.

Q. Were you a witness in the case of W. H. Goltra against Foster and Crawford in the Linn county circuit court? Did you testify in that case?

A. I was; I did.

Q. Did you state then anything about the matter in regard to which you are now testifying, in regard to having found that note?

A. I did not.

Q. Did you hear your father, W. H. Goltra, testify in that case?

A. I did.

Q. Did he in his evidence state anything about any such note as the $2,750 note having been given to him by Foster upon any such understanding as that?

A. He did not that I remember of.

Q. Have you ever conversed with anybody besides your father in regard to what you testify about this $2,750 note being found by you after the holidays when it was not there at your previous examination of your father's notes?

A. I have.

Q. With whom, and when?

A. I could not state the date. In a general way I have told some of my young men friends at Salem.

Q. Was it before or after this suit was commenced that you told them?

A. I could not say whether it was last spring or this past fall.

Q. Give the names of any of your young men friends at

751 Salem to whom you made such statement.

A. L. F. Conn and J. B. Starr.

Q. Were you residing at Salem at the time you made these statements to them?

A. Yes, sir.

Q. Can you not, then, refresh your memory as to the date and state whether you made those statements before or after this suit was commenced?

A. I cannot, for the reason that I have talked with them several times in a conversational way in regard to the suit both last spring and this past fall.

Q. Did you and your father ever talk over the matter of Foster having given him that $2,750 note before you and he testified in the suit of Goltra against Foster and Crawford?

A. I do not remember of having any conversation with him specifically about that note after February of 1884.

Q. What did he say to you about it then?

A. He said that the note that had been paid in October that was given in April, 1883, had been duplicated by Mr. Foster in order to cover the proceeds of the flour, which I mentioned a few months ago—that is, that note in company with the other note, as I stated a few months ago.

Q. What was the object and purpose of that suit brought by your father against Foster and Crawford; was it to set aside that sale from Foster to Crawford of the mill and other property?

A. That was my understanding.

Q. And yet you say that neither you nor your father made any mention in your testimony in that case of the giving of that fictitious note by Foster to your father for $2,750, which you say you found was after the holidays among your father's notes and papers?

752 A. I do not remember of father saying anything in his testimony in regard to it. I am certain I did not.

Q. How long did that note remain in your father's possession after you first saw it after the holidays?

A. I was in Albany several times between February and about the first of May, but the first of May the note was gone. How long it had been gone before that I do not know.

Q. May of what year?

A. 1884.

Q. Then it was in February, 1884, that you claim to have found it among your father's papers?

A. Yes, sir.

Q. How often did you ever examine or look at the note after you first found it there in February, 1884?

A. I was in Albany two days. I may have looked at it two or three times during the course of those two days. The first day I was there I looked at it closely, but whether or not I examined it again before leaving I cannot say.

Q. Did you have any conversation with your father about the note before you first saw it and examined it closely, as you say?

A. The conversation I had with him in regard to it happened after I had examined the note. I suppose about half an hour.

Q. Are you acquainted with Robert A. Foster's handwriting?

A. I was at the time; saw it frequently.

Q. Will you swear that the body of that note was in his handwriting?

A. Yes, sir.

Q. Are you acquainted with the handwriting of James H. Foster?

A. I have never seen very much of it; principally his signatures to the notes at the store.

Q. Did you ever see him write his signature?

A. I could not say positively that I have.

Q. Do you, then, swear that the signature to that note for
753 $2,750 which you claim to have found among your father's papers in February, 1884, was the genuine signature of James H. Foster?

A. It was the same as the signature of the other note. I was not present when either note was drawn. The signature differed from the body of the note. It was in rather a heavy hand and not very smooth.

Q. How was it with the genuine note given April 2, 1883, as to the body and signature?

A. The signature accorded with the other signatures. Concerning the body of the note, I could not say positively.

Q. Will you swear that you ever told any one of your finding such a note and conversing with your father about it prior to the time when this present suit was commenced by Neal against Foster and Crawford and others?

A. Yes, sir.

Q. Who are they?

A. I talked to Mr. Deyoe about it, and, I believe, showed him the note on the day I found it, in February. As to showing him the note I would not say positively, but I think I showed it to him at the time.

Q. Has Mr. Deyoe been a witness in this case?

A. Not that I know of.

Q. Was he a witness in the suit of Goltra against Foster and Crawford?

A. I think not.

Q. In what store was it that you think you talked with him about it?

A. In my father's store, corner of First and Ellsworth
754 streets, Albany.

Q. Is Mr. Deyoe employed in that store in any way?

A. He was clerk there—had been clerk for about two years, off and on.

Q. Prior to that time?

A. Yes, sir. At that time he had been clerk steadily for about ten months.

Q. Did you ever see that note among your father's papers after you first found the note there in February, 1884?

A. I do not remember.

Q. You do not remember to have seen it but the one time, then?

A. No, sir.

Q. And you do not know what became of it, except from what your father told you?

A. No, sir; it was removed during my absence at Salem.

Q. But your father told you what he did with it before he commenced the suit against Foster and Crawford?

A. He did.

Redirect, J. O. Goltra.

Redirect examination:

Q. Why did you not, in the suit in the State court, testify as to this note?

A. There was no question put to me concerning any of the notes. The question addressed to me was concerning a conversation between Mr. Crawford and my father.

Q. Did you hear the questions propounded to your father?

A. I did—most of them—and I think all.

Q. Was he asked anything about the note?

755 A. Not that I know of. I am quite certain he was not.

Recross.

Recross-examination:

Q. By whom were the questions propounded to you and to your father in your testimony in that case at that time?

A. Mr. Weatherford questioned me and I think also my father.

Q. Was he your father's lawyer in the case?

A. He was.

Q. Had you ever said anything to Mr. Weatherford about finding that note that you now testify about, in February, 1884, before you were called on the witness stand?

A. Neither before nor since.

Q. Were you book-keeper for your father in February, 1884?

A. I was not what you would call his regular book-keeper. I was his regular book-keeper during the summer; closed his books each year during the holidays, and visited Albany every four or five weeks, and did most of his work on his books almost every time, that being part of my object in going to Albany.

Q. Are you interested in the store in any way with your father?

A. No, sir; only as clerk and book-keeper.

Q. Who keeps the books in your absence?

A. My father.

Q. Did you at that time—in February, 1884—make up any book-keeping on the books for your your father in your handwriting?

A. I think I posted some and wrote some in his sales book. I usually did some of both.

Q. Did you post that note on the books at that time as being found in the safe among your father's property?

756 A. I did not.

Q. Did you post any other notes or accounts at that time?

A. I do not remember positively. It is quite probable that I did.

By Mr. C. E. S. Wood, of counsel for complainant:

Q. Why did you not post this note that you found?

A. Father instructed me not to post it for the reason that it was bogus.

Q. This note that we have been speaking about—that you saw at one time, and which then disappeared and then reappeared—do I

understand that when it reappeared it was the same note or a duplicate of it?

A. I could not say positively that it was a duplicate of it. The notes, I believe, were drawn on the same kind of blanks. I suppose that it was a duplicate for the reason that the other note, according to what father told me, had been paid in October the year before.

JNO. O. GOLTRA.

757 STATE OF OREGON, } ss:
County of Multnomah, }

I certify that the foregoing pages, numbered consecutively from 1 to 6, inclusive, contain a full, true, and correct transcript from the original short-hand notes taken by me of the testimony of John O. Goltra, taken at the time and place and under the circumstances stated in the caption thereof, and that at the conclusion of the taking thereof it was agreed between the respective counsel then present that the said original short-hand notes should be signed by said witness, and that such signature should be in lieu of any signature to the foregoing transcript; and I further certify that said original short-hand notes were accordingly signed by the said witness after the same had been read over to him by me, and I hereto attach the said original short-hand notes so signed as a part hereof.

H. H. PARKER.

This testimony was taken to accommodate counsel, by consent, while another witness was being examined before Stenographer Richardson. Mr. Parker was duly sworn by me as stenographer.

GEO. H. DURHAM, *Master.*

758 Parties met, by consent, on the 11th day of March, 1885—present, same as before—when the following proceedings were had:

Defendants' Rebuttal.

Testimony of James H. Foster (recalled).

JAMES H. FOSTER, recalled on behalf of the defendants, testified as follows:

Direct examination by E. C. BRONAUGH, Esq., for the defendants:

Q. Are you acquainted with W. H. Goltra, one of the witnesses, who has testified on behalf of the plaintiff in this suit?

A. I am acquainted with him.

Q. Mr. Goltra states in evidence that shortly after the transfer of the mill and other property by you to John A. Crawford you gave him a note for about $2,750, which was antedated to correspond as nearly as could be from memory with the previous note which he had owed you about a year before and which had been paid, and that this note then given and so antedated was without consideration and given upon the understanding that he was to hold it and collect any balance coming to you from the proceeds of flour that

was afloat for your use and benefit. State what you know, if anything, with regard to the making of any such note as that.

A. I never made any such note; neither did I ever sign any such note; neither did I ever authorize any other person to make or sign or deliver to Mr. Goltra any such note; neither did I have any conversation with Mr. Goltra respecting any such transaction as that.

Q. State whether there ever was any conversation or agreement between you and Mr. Goltra to the effect that he should col-
759 lect any such balance of proceeds from the sale of that flour for your use and benefit or to hold it in trust for you.

A. No such arrangement or understanding with Mr. Goltra to ever collect or hold in his possession any amount of money respecting that flour; never made any such arrangement with him nor had such conversation.

Q. State whether or not, either before or about the time of or shortly after the transfer of property by you to John A. Crawford, you gave to W. H. Goltra any note for the sum of $2,750 or any other sum, which was antedated and without consideration.

A. I gave Mr. Goltra no notes after the sale to Mr. Goltra nor no $2,700 note, nor no note without any consideration.

Q. Did Mr. Goltra at that time hold any note against you when you made the transfer?

A. He held a note against me at that time.

Q. For about what amount?

A. I disremember, but it was over $2,000. That is my recollection of it; it was over $2,000.

Q. Have you ever since the transfer given him any note at all?

A. I have given him no note since the transfer.

Q. State, then, whether his testimony in regard to that alleged fictitiout note for $2,750 is true in any particular whatever.

A. I didn't hear Mr. Goltra's testimony, but what I have stated respecting the $2,700 note is true, and if Mr. Goltra has stated that I did give him a $2,700 note he is mistaken.

Q. He said $2,750.

A. Or whatever amount he might have said.

Q. Then you state there never was a fictitious note given
760 by you to Goltra at no time or for any purpose?

A. There never was.

Q. Did you hear Goltra's testimony in the suit or action brought by him in the Linn county circuit court against yourself and Crawford seeking to set aside this same conveyance?

A. I heard his testimony.

Q. State whether in that testimony he made any allusion to or statement about any such fictitious note ever having been executed by you or delivered to him?

A. I heard no evidence given by Mr. Goltra on that occasion that had any allusion to such a transaction.

Q. Did he in that testimony make any statement of any such agreement or understanding between you and him that he was to collect any balance that might remain of the proceeds of that flour and hold it for your use and benefit?

A. I heard no such statement, and if he had I am satisfied that I would have taken notice of it.

Q. Mr. Goltra, in answer to a question propounded to him in giving his last testimony in this case, says: There was a note made and given to me shortly after the transfer—I don't remember exactly the date—but it was given for the purpose of covering proceeds said to be in certain flour here in Portland, and it was given for the purpose of keeping it from being attached, if there were any proceeds, which he said at — time there was over and above claims against flour. Some of the flour was afloat and some was here in the Bank of British Columbia. Mr. Foster seemed to think there would be more in the proceeds of that flour than would pay my claim, and he wished to have the disposition of that whatever there might be
761 over and above *there might be over and above* what was to pay me—that is, the disposition of it. I don't remember who was to pay them, but that is what he said. He gave me a note that was a duplicate of the note that I had held against him the year before for wheat sold to him. The amount of the note, if I remember right, was about $2,750. That note was written by his son R. A. Foster, who was keeping the books at that time, and signed by James H. Foster, who was in the office sitting at the table, and his son was at the desk—Mr. R. A. Foster—and the note was entered on the journal in my presence.

State whether that evidence of Mr. Goltra is true or false.

A. I will state that shortly after I disposed of this property to Mr. Crawford I had a certain amount of flour—two lots—that were shipped by Sibson and Church; I think 10,000 sacks, 100 pounds each, in each lot. There was a lot of flour deposited in East Portland, but turned over to the Bank of British Columbia—I think somewheres about 15,000 hundred-pound packs—and there had been money drawed on this flour that they had advanced on it. Shortly after, as I said before, I made this sale to Mr. Crawford. Judge Strahan wrote out a conveyance by which I turned over all my right, title, and interest in that flour to William Goltra. My son Robert took the paper and carried it up and gave it to Goltra, I suppose. He said he did. I think probably that day I met Mr. Goltra, and I explained to him as well as I knew how the condition of that flour and the amount that had been advanced on it, and I told him that if flour advanced that he would get his pay out of it; if it sold at the prices it was or declined, that there wouldn't be anything in it; and my recollection is that I said if there
762 should be anything over and above what pays you I would like it to go to those I owe; didn't name any person. That was all the conversation that I remember I had with him at that time. Afterwards he informed me that he had been notified by the parties that held the flour that they wished him to sign a certain order authorizing them for to dispose of this flour. I don't understand exactly what it was for; I didn't see it; but now I will state that, as far as ever talking to him about saving for me any money that might be over and above his claims, and me give him any note as there stated, I never gave him a note; I never talked

with him or proposed to give him a note, or never heard anything about a note till I heard of this—that he had made a statement in his deposition to that effect.

Cross-examination by C. E. S. WOOD, for plaintiff:

X Q. Who did you say had this flour, Mr. Foster, in the two lots of 1,000 bags each—1,000 sacks each?

A. 10,000.

X Q. 10,000 sacks each.

A. Sibson and Church.

X Q. They had both lots?

A. Yes, sir; it was shipped by them for me.

X Q. Well, the 15,000 sacks in the Bank of British Columbia. Were they included in the Sibson and Quackenbush lot?

A. They was in the possession of the Bank of British Columbia at the time the sale was made to Crawford, although I had given an order to Sibson and Church authorizing them to get 10,000 barrels of this flour by them paying the advances to the Bank of British Columbia that they had made on it; but they hadn't received
763 the flour from the Bank of British Columbia at the time that this sale was made to Crawford.

X Q. Were they sacks or barrels?

A. Sacks.

X Q. Do you know what became of the instrument that Judge Strahan drew conveying your interest in the flour to Goltra?

A. Goltra told me that he received it from my son; that is all I know about it.

X Q. As I understand the substance of your testimony is, it is that you never made but the one note to Goltra for about $2,750; that was before the sale and on consideration. That is the only note that has been in existence between you of about that amount?

A. My recollection is that some considerable length of time before this transaction I bought a lot of wheat from William Goltra and gave him a note for it or part of it; the amount of the note I disremember, but probably it was twenty-seven hundred and some odd dollars. He held the note until it became due and I paid it to him or soon after. Not long before I made this trade with Crawford I had purchased a lot of wheat from Mr. Goltra and gave him a note for it; the amount of that note I don't remember, but I think it was over $2,000; that note I owed him at the time that I made this sale to Crawford, and this flour I turned over to him supposing that if there should be anything to come out of it that it would pay him that note.

X Q. The first note you speak of as being paid you took up when you paid it, I suppose?

A. I suppose I did.

X Q. You don't remember?

A. I don't remember.

764 X Q. When you made this conveyance to Goltra it was done as security on that note that you last spoke of, was it?

A. My recollection is that it conveyed my right in that flour absolutely to him.

X Q. It was payment of the note, then—it was meant to pay off the note?

A. Yes; it was meant—that was what it was meant for.

Redirect.

Redirect examination by E. C. BRONAUGH, Esq., for the defendants:

R. D. Q. It was meant to pay off which note?

A. The note he held—the last one I had given him that wasn't taken up.

R. D. Q. You are not certain whether the genuine note given a considerable while before the sale to Crawford for something like $2,700 was surrendered to you when it was paid or not, as I understand you?

A. I presume that it was surrendered, but I cannot distinctly place my mind upon the surrender of the note and the delivery of it; that was my way of doing business, when I paid a note to receive it, and that is the only reason now I would have to suppose that it was surrendered.

R. D. Q. Then if Goltra still holds such a genuine note for about $2,700 or upwards, bearing your signature, it is that note which you say you paid and which was not surrendered, is it?

C. E. S. WOOD, Esq., for the plaintiff: Object to that as incompetent for him to testify whether it was that or not.

A. If Mr. Goltra has any $2,700 note against me dated at the same date that that was it has been settled; all that I owe Mr.
765 Goltra is the last note that I gave him, and there is but one note due him; if he has any others——

R. D. Q. Then you state positively that you never did give him any such fictitious note as he testifies about?

A. I state most positively that I never gave any such note.

(Signed) J. H. FOSTER.

Testimony of R. A. Foster.

R. A. FOSTER, being called and duly sworn as a witness on behalf of defendants, testified as follows:

Direct examination by E. C. BRONAUGH, Esq., for the defendants:

Q. State your name, age, place of residence, and occupation.

A. Robert A. Foster; 31 years old; occupation, receiver of materials, United States engineers; residence, Portland.

Q. State whether or not you are related to James H. Foster, one of the parties to this suit. If so, how?

A. Yes, sir; son.

Q. Do you know W. H. Goltra?

A. I do.

Q. Mr. Goltra testified as a witness for plaintiff in this suit that shortly after the date of the transfer of this mill and other property by James H. Foster, your father, to John A. Crawford that your father gave to him, Goltra, a fictitious note for about the sum of $2,750, which was antedated, with the understanding that if the proceeds of the sale of certain flour then afloat and other
766 flour held by the Bank of British Columbia should be more than sufficient to pay advances and other prior claims against it, that he, Goltra, should collect such balance of proceeds of sale for the use and benefit of James H. Foster and should hold that fictitious note for that purpose, and Mr. Goltra states in his evidence that that matter was talked over and agreed to between him and James H. Foster in your presence in the office, and that you wrote the note and James H. Foster signed it and delivered it to him, Goltra, and that he kept the note for a few days and then delivered it back to you. State what you know, if anything, concerning such an occurrence or transaction.

A. There is no such an occurrence happened to my knowledge.

Q. State whether you ever wrote such a note.

A. No, sir.

Q. State whether Mr. Goltra ever delivered such a note to you.

A. No, sir.

Q. State whether you ever heard any such conversation or agreement between James H. Foster and Goltra.

A. No, sir; I didn't.

Q. State whether or not you entered any memorandum of that note or of that transaction in any book belonging to James H. Foster or the mill.

A. No, sir.

Q. State whether Mr. Goltra's testimony in regard to such a transaction and understanding and such a note drawn up by you, and signed by your father and delivered to him, Goltra, and afterwards redelivered by him to you is true or false.

A. It is false.

767 Q. State whether you ever heard of any such transaction or knew anything about an alleged occurrence of that sort prior to the statement about it given by Mr. Goltra in his evidence.

A. No, sir.

Q. State whether you ever wrote out or drew up any note from James H. Foster or James H. Foster & Company to Goltra, being about the amount of $2,750 or any other sum, after James H. Foster had transferred or sold the property in litigation to John A. Crawford.

A. No, sir.

Cross-examination by C. E. S. Wood, Esq., for the plaintiff:

X Q. What was your business at that time, Mr. Foster?

A. I was, might be called book-keeper.

X Q. Do you remember hearing at any time, whether before or after the sale, any conversation between your father and Mr. Goltra

relative to the indebtedness between your father and Goltra being paid?

A. State that again.

X Q. Do you remember any conversation between your father and Goltra at any time, whether before or after the sale, relative to your father's indebtedness to Goltra and the means by which Goltra was to be paid?

A. Yes, sir.

X Q. What was the conversation?

A. Well, it was nothing more than a general term in relation to the transfer of flour the time the flour was transferred, he
768 himself not knowing much about the business, and asked questions once in awhile in relation to margins that had to be put up on it, or something of that kind.

X Q. Who did that?

A. Goltra. There was some deficiencies on that flour and margins that were necessary to be put up in case he carried it.

X Q. Was this before or after the sale?

A. This was after the sale.

X Q. Did you ever draw a note between the parties—Goltra and your father?

A. I don't know whether I ever drew a note. I suppose likely I have drawn notes for them, but I couldn't swear to it positively that I ever drew a note; used to generally, if there was anything of the kind, generally write it out.

X Q. You are certain you never did after the sale?

A. No, sir; I didn't.

X Q. Did Goltra ever deliver any note to you?

A. I couldn't swear as to that whether he ever did or not.

X Q. Do you remember the amount of the balance that was due Goltra?

A. I don't.

X Q. Do you remember the amount of flour?

A. I have forgotten that, too. I don't remember that.

Redirect.

Redirect examination by E. C. BRONAUGH:

R. D. Q. State whether Mr. Goltra ever delivered any note given to him by James H. Foster to you after the sale and transfer
769 of property by James H. Foster to John A. Crawford.

A. No, sir.

(Signed) ROBERT A. FOSTER.

770 *Exhibits Q, R, S, T, V. Judgment-Rolls.*

C. E. S. WOOD, Esq., for the plaintiff: Plaintiff offers judgment-roll in the case of Goltra *vs.* Foster; judgment-roll in the case of Liles *vs.* Foster; judgment-roll in Goltra *vs.* Foster & Company; judgment-roll in Waldron *vs.* Foster & Company, and judgment-roll in Baltimore *vs.* Foster & Company.

GEO. H. DURHAM, Esq., examiner: They are respectively marked Complainant's Exhibits Q, R, S, T, U.

E. C. BRONAUGH, Esq., for the defendants: Counsel for defendants objects to the introduction of each and all of said judgment-rolls and exhibits on the ground that they are and each of them is incompetent and immaterial as evidence, and ought not to be received as evidence in this case either in rebuttal or otherwise.

Adjourned indefinitely.

GEO. H. DURHAM, *Master*.

771 AUGUST 29TH, 1887.

On the argument of this cause Mr. Weatherford, of counsel for Goltra and other defendants, sought to refer to certain books of account which were present in my office, but which had not been offered in evidence as the books of Foster, and offered the books in evidence. Objection was made thereto on the ground that the case was closed and that the books were not identified; and, further, that the books themselves could not be put in evidence by any other person than the owner; that counsel must specify what account he wished and have copies thereof made for such use. I sustained the objection.

Later in the argument Judge Williams renewed the offer on behalf of the complainant, and upon the same objection being again made I sustained the objection. At his request I note the fact.

GEO. H. DURHAM, *Master*.

772 DISTRICT OF OREGON, *ss*:

This certifies that the foregoing testimony contained in the preceding record was taken before me at the times and places in said record specified; that before proceeding to the examination of the several witnesses they were by me duly and severally sworn to tell the truth, the whole truth, and nothing but the truth; that thereafter their testimony was duly reduced to writing in short-hand (with the exception of two or three witnesses, whose testimony was taken in long-hand by myself), and was then read to the respective witnesses and then by them respectively subscribed—that is to say, the said short-hand notes were so subscribed and thereafter extended; that the several stenographers so employed were by me respectively sworn as such before entering upon the discharge of their duties.

GEO. H. DURHAM, *Master*.

June 11, 1887.

773 COMPLAINANT'S EXHIBIT "A." G. H. D., Master.

In the Circuit Court of Linn Co., Oregon.

W. S. SIBSON, E. QUACKENBUSH, and S. FARRELL, Partners as Sibson, Quackenbush & Co.,

v.

J. H. FOSTER, Doing Business as J. H. Foster & Co.

In consideration of the sum of one dollar and other valuable consideration, the receipt of which is hereby acknowledged, we, the

plaintiffs in the above-entitled cause, hereby sell, assign, transfer, set over, and convey unto Charles A. Neal, of Illinois, the judgment rendered in said cause in our favor and against the above-named defendant on the 8th day of March, 1886, for $14,037.87 and costs and all moneys now due thereunder.

Witness our hands and seals this the 11th day of June, A. D. 1886.

WM. S. SIBSON. [L. S.]
E. QUACKENBUSH. [L. S.]
S. FARRELL. [L. S.]

Witness:
F. W. REYNOLDS.
REGINALD THOMPSON.

DISTRICT OF OREGON, *ss*:

I, George H. Durham, master in chancery, do hereby certify that I have carefully compared the foregoing copy of assignment with the original thereof offered in evidence as Complainant's Exhibit "A" in the cause of Charles A. Neal *vs.* James H. Foster *et al.*, in the United States circuit court for the district aforesaid, and that it is a correct transcript therefrom and of the whole thereof and is made and filed by me in lieu of said original at the request of complainant's counsel, who states that the said complainant does not desire to part with the said original.

Witness my hand this — day of November, 1886.

GEO. H. DURHAM,
Master in Chancery.

774 COMPLAINANT'S EXHIBIT "B." G. H. D., Master.

In the Circuit Court of the State of Oregon for the County of Linn.

W. C. NOON, T. F. OSBORN, G. H. BRYANT, S. A. NEVILLE, and C. M. Osborn, Partners, Composing the Firm of W. C. Noon & Co.

v.

J. H. FOSTER, Doing Business as J. H. Foster & Co.

In consideration of the sum of one dollar and other valuable consideration, the receipt whereof is hereby acknowledged, we, the plaintiffs in the above-entitled cause, hereby sell, assign, transfer, set over, and convey unto Charles A. Neal, of the State of Illinois, the judgment rendered in said cause in our favor and against the above-named defendant on the 8th day of March, 1886, for $1,904.65 and costs and all moneys now due thereunder.

Witness our hands and seals this 19th day of June, 1886.

W. C. NOON. [L. S.]
F. F. OSBORN. [L. S.]
G. H. BRYANT, [L. S.]
S. A. NEVILLE, [L. S.]
C. M. OSBORN, [L. S.]
By F. F. OSBORNE,
Attorney-in-Fact.

Executed in the presence of—
T. J. ARMSTRONG.

DISTRICT OF OREGON, *ss:*

I, George H. Durham, master in chancery, do hereby certify that I have carefully compared the foregoing copy of assignment with the original thereof offered in evidence as Complainant's Exhibit "B" in the cause of Charles A. Neal *vs.* James H. Foster *et al.*, in the United States circuit court for the district aforesaid, and
775 that it is a correct transcript therefrom and of the whole thereof and is made and filed by me in lieu of said original at the request of complainant's counsel, who states that the said complainant does not desire to part with the custody of said original.

Witness my hand this — day of November, 1886.

GEO. H. DURHAM,
Master in Chancery.

776 COMPLAINANT'S EXHIBIT "C." G. H. D., Master.

STATE OF OREGON, }
Linn County, } *ss:*

I, John A. Crawford, being first duly sworn, say that my assessment for the year 1882 was and is erroneous, as hereinafter set forth; that the assessor of Linn county called on this affiant on or about the 1 day of September, 1882, for the purpose of assessing this affiant; that this affiant was then and there requested by said assessor to give a list of all his property, real and personal, subject to taxation in said county, and that affiant then proceeded to give said assessor a true and correct list of his said property, and did give said assessor a true list and account of all his property liable to taxation, according to the best of his knowledge and belief; that said assessor, before proceeding to assess this affiant, did not swear affiant, nor did he request affiant to be sworn to give a true and correct list of his property liable to taxation, and that affiant was then and there ready to be sworn to give such list to the best of his knowledge, and in truth and fact did give such list to said assessor.

That after this affiant had given said assessor such list and account of his property said assessor then and there requested this affiant to subscribe an affidavit attached to said list and prepared by said assessor, and that this affiant refused to subscribe his name to said affidavit attached by said assessor to said list, and thereupon paid to said assessor the sum of $20.00 for failing and refusing to subscribe the said affidavit, which sum said assessor received from this affiant for his said refusal to comply with the request of said assessor.

777 That the list and account of the property furnished by this affiant to said assessor was, in truth and fact, a true and correct list and account of all the property, real and personal, of this affiant liable to taxation in said county at the time of said assessment, to the best knowledge and belief of this affiant; that after this affiant had furnished said assessor said list of property said assessor, of his own motion and without the knowledge of affi-

ant, raised the amount of the notes, money, and accounts of this affiant about $42,155 over and above the amount thereof actually owned by this affiant and over and above the amount thereof given in by this affiant to said assessor; that this affiant had no knowledge that his assessment had been so raised and increased by said assessor and had no notice whatever that said assessor intended to raise and increase his said assessment until after the assessment-roll for 1882, with the warrant attached, was placed in the hands of the sheriff for collection, when this affiant called on said sheriff to pay his taxes for said year, and that said assessor increased the amount of affiant's taxable property without authority and to the injury of affiant; that affiant's assessment for 1882 was and is substantially as given in by this affiant to said assessor, except as hereinbefore set forth, and was and is substantially correct, except as hereinbefore mentioned.

That the total amount of the assessed value of the real property of affiant for said year, at the time of said assessment, was the sum of		$31,411
Mdse.		105
Money, notes, and acc'ts		13,500
Furniture, &c.		375
	Horses	650
778	Cattle	70
	Swine	5
Gross value taxable property		$46,116

Tax, —.

And affiant alleges that the foregoing list contains a true and correct list of all the property owned by affiant at the time said assessment was made, to the best of this affiant's knowledge and belief, liable to taxation in said county, and affiant respectfully asks that the excess of his taxes for said year be remitted, to wit, $629.39.

J. A. CRAWFORD.

Subscribed and sworn to before me this 6th day of March, 1883.

[NOTARIAL SEAL.] GEO. E. CHAMBERLAIN,
Notary Public.

Filed June 7, 1883.

C. H. STEWART, *Clerk.*

DISTRICT OF OREGON, *ss:*

I, George H. Durham, master in chancery, do hereby certify that I have carefully compared the foregoing copy of affidavit wit- the original thereof offered in evidence as Complainant's Exhibit "C," in the cause of Charles A. Neal *vs.* James H. Foster *et al.*, in the United States circuit court for said district, and that it is a correct transcript therefrom and of the whole thereof, and is made and filed by me in lieu of the said original, at the request of complainant's counsel, for the reason that said original is a part of the files of the clerk's office of Linn county, in said State, and because said origi-

nal is now in evidence in a certain cause pending in the State courts for said State.

Witness my hand this — day of November, 1886.

GEO. H. DURHAM,
Master in Chancery, U. S. Court.

(Here follow Complainant's Exhibits D and E, marked pp. 779 and 780.)

781 COMPLAINANT'S EXHIBIT "F." G. H. D., Master.

Mortgage Record.

James & John Foster to William Crawford. } Filed for Record July 22nd, 1867, at 4 o'clock p. m.

This indenture made this 20th day of July, 1867, between James H. Foster, and Martha J. Foster his wife and John Foster all of the city of Albany Oregon parties of the first part and William Crawford of the same place party of the second part, witnesseth:

That the party of the first part for and in consideration of the sum of ten thousand ($10,000) dollars in U. S. gold coin to them in hand paid the receipt whereof is hereby acknowledged have bargained and sold aliened released conveyed and confirmed, and by these presents do bargain sell alien release convey and confirm unto the said party of the second part his heirs and assigns forever, all the following described property, to wit:

782 Commencing at a point twenty-five (25) feet east of the southwest corner of lot No. (7) seven in block No. four (4) as known and described on the town plat of the town of Albany Linn county Oregon. The said point being the southwest corner of what is known as "Fosters two-story brick building" and running thence east thirty feet, thence north full depth of said lot. Thence west thirty feet. Thence south to the place of beginning including and embracing thereon the said two-story brick building now situate thereon. And also the additional following described real estate property and rights to wit: All that certain piece or parcel of land in the town (now city of) Albany, Linn county Oregon and known as the "Mill lot" on which is situated the "Crawford mills" bounded on the south by an alley dividing block No. twelve (12) running east and west on the east by a line running from the east end of said alley along the east boundaries of block No. twelve (12) and one (1) in said town (now city) and on the same range to mouth of Calapooia creek — on the west

783 by the Calapooia creek up to the mill dam. Thence along the said mill dam to the west side of said stream at the usual stage of water in the dam. Thence up and along the said stream to a point immediately west of the place of beginning; thence east across the said stream to where the said alley dividing block No. 12 strikes the said Calapooia: together with the mill and dam, water power and machinery and buildings belonging and appertaining to

said lot and mills and also the mill race or tail leading from said mill, together with seven hundred and twenty (720) cubic inches of water with the first and absolute right of the party of the second part to take the same, the water from above said dam, together with the full, complete and absolute right of the party of the second part to use and have and enjoy any — all of the residue of said water except as reserved by the said party of the second part in his certain deed of conveyance of the same premises to the parties of
784 the first part herein excepting the said Martha J. Foster being even date with this mortgage. Together with all the tenements hereditaments and appurtenances improvements, buildings, rights privilege and franchises attending, appertaining and belonging to any and all of the premises hereinbefore mentioned and described:

And also all the estate right title interest dower and right of dower, property possession claim and demand whatsoever of the said parties of the first part of in and to the same, and the reversion and reversions remainder and remainders rents issues and profits thereof.

To have and to hold the hereinbefore granted bargained and described premises, with the appurtenances unto the said party of the second part his heirs and assigns to his and their own proper use benefit and behoff forever.

This conveyance is intended as a mortgage to secure the payment of the sum of ten thousand ($10,000) dollars in U. S. gold coin with interest thereon at the rate of ten per cent. per annum:
785 the said sum of money and interest to be paid in kind and according to the tenor and effect of five certain promissory notes bearing even date herewith, made by the said James H. Foster and John Foster to the party of the second part herein, a true copy of which several notes is in words and figures as follows herein inserted and made a part of this mortgage, to wit:

"ALBANY, OREGON, *July 20th*, 1867.

One year after date we or either of us promise to pay William Crawford, or order, the sum of two thousand dollars in U. S. gold, with interest thereon at ten per cent. in U. S. gold coin from date until paid, value received.

(Signed) JAMES H. FOSTER.
(Signed) JOHN FOSTER."

"$2,000.00. ALBANY, OREGON, *July 20th*, 1867.

Two years after date we or either of us promise to pay William Crawford, or order, the sum of two thousand dollars in U. S. gold coin, with ten per cent. interest in coin per annum, the interest to be paid annually on the whole amount, value received.

(Signed) JAMES H. FOSTER.
(Signed) JOHN FOSTER."

786 "$2,000.00. ALBANY, OREGON, *July 20th*, 1867.

Three years after date we or either of us promise to pay

William Crawford, or order, the sum of two thousand dollars in U. S. gold coin, with ten per cent. interest from date, the interest on the whole amount to be paid annually in coin, value received.

(Signed) JAMES H. FOSTER.
(Signed) JOHN FOSTER."

"$2,000.00. ALBANY, OREGON, *July 20th*, 1867.

Four years after date, for value received, we or either of us promise to pay William Crawford, or order, the sum of two thousand dollars in U. S. gold coin, with interest at ten per cent. per annum in coin, to be paid on the whole amount at the end of each year.

(Signed) JAMES H. FOSTER.
(Signed) JOHN FOSTER."

"$2,000.00. ALBANY, OREGON, *July 20th*, 1867.

Five years after date we or either of us promise to pay William Crawford, or order, the sum of two thousand dollars in U. S.
787 gold coin, with ten per cent. interest per annum from date, the interest to be paid on the whole amount annually at the end of every year, in coin, value received.

(Signed) JAMES H. FOSTER.
(Signed) JOHN FOSTER."

But in case default shall be made in the payment of the principal or interest as above provided in said notes and each of them, the *the* party his executors administrators and assigns are hereby empowered to sell the premises above described and every part thereof, with all and every of the appurtenances, or any part thereof in the manner prescribed by law and out of the money arising from such sale to retain the said principal and interest together with the costs and charges of making such sale, and the overplus if any there be shall be paid by the party making such sale on demand, to the party of the first part their heirs or assigns.

And the said James H. Foster and John Foster for themselves their executors and administrators doth covenant and agree to pay unto the said party of the second — his executors and
788 administrators or assigns the said sum of money and interest as above mentioned.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JAMES H. FOSTER. [SEAL.]
MARTHA J. FOSTER. [SEAL.]
JOHN FOSTER. [SEAL.]

Witnesses:
GEO. R. HELM.
N. B. HUMPHREY.

[U. S. I. R. stamp, $10, cancelled July 20th, 1867.]

STATE OF OREGON, } ss:
County of Linn, }

On the 20th day of July, A. D. 1867, before the undersigned, a

and that defendant fails, neglects, and refuses to pay the same or any part thereof.

For a further and separate cause of action against the above-named defendant plaintiff alleges—

That on the 27th day of June, 1883, defendant was doing business under the name and style of J. H. Foster & Co.

That on said 27th day of June, 1883, said defendant, under said name of J. H. Foster & Co., duly made, executed, and delivered unto one C. T. Ingram his certain promissory note in words and figures as follows, to wit:

"$843.10. ALBANY, *June* 27, 1883.

Sixty days after date (without grace) we promise to pay to the order of C. T. Ingram eight hundred & forty-three $\frac{10}{100}$ dollars for value received, with interest at ten per cent. per annum from date until paid, both principal and interest payable only in United States gold coin.

No. 19.

(Signed) J. H. FOSTER & CO.
R. A. F."

That afterwards, to wit, on the 19th day of January, 1886,
797 said C. T. Ingram, for value received, sold, assigned, and endorsed said note to this plaintiff, and that plaintiff is now the owner and holder thereof; that said note has not been paid nor any payments paid thereon, and that there is now justly due and owing from defendant to plaintiff on said promissory note the sum of $843.10, with interest theron at the rate of ten per cent. per annum from June 27th, 1883, and that defendant fails, neglects, and refuses to pay the same or any part thereof.

For a further and separate cause of action against defendant plaintiff alleges—

That on the 21st day of January, 1884, the defendant was doing business in Albany, Oregon, under the name and style of J. H. Foster & Co.

That on said 21st day of January, 1884, the defendant, under said name of J. H. Foster & Co., for value received, duly made, executed, and delivered to one C. T. Ingram his certain promissory note in words and figures as follows, to wit:

"$725.70. ALBANY, *Jan'y* 12, 1884.

One day after date (without grace) we promise to pay to the order of C. T. Ingram seven hundred & twenty-five $\frac{10}{100}$ dollars for value received, with interest at ten per cent. per annum from date until paid, both principal and interest payable only in United States gold coin.

No. —.

(Signed) J. H. FOSTER & CO.
R. A. F."

That afterwards, to wit, on the 19th day of January, 1886, said C. T. Ingram, for value received, duly assigned, transferred, and en-

dorsed said note to this plaintiff, and that pl'ff is now the owner and holder thereof; that said promissory note has not been paid nor any payments made thereon.

That there is now justly due and owing from defendant to plaintiff on said promissory note the sum of $725.70, with interest
798 thereon at the rate of ten per cent. per annum from the 21st day of January, 1884, and that defendant fails, neglects, and refuses to pay the same or any part thereof.

For a further and separate cause of action against the above-named defendant plaintiff alleges—

That on the 26th day of September, 1882, defendant was doing business in Albany, Oregon, under the name of J. H. Foster & Co.; that on said 26th day of September, 1882, the defendant herein, under said name of J. H. Foster & Co., for value received, made, executed, and delivered to one V. H. Caldwell his certain promissory note in words and figures as follows, to wit:

"$800. ALBANY, OREGON, *Sept.* 26, 1882.

One day after date, without grace, we promise to pay to the order of V. H. Caldwell, at Albany, Oregon, eight hundred dollars in gold coin of the United States of America, with interest thereon in like gold coin at the rate of ten per cent. per annum from date until paid, for value received; and in case suit or action is instituted to collect this note or any portion thereof we promise to pay such additional sum as the court may adjudge reasonable as attorney's fees in said suit or action.

No. —. Due ——.

(Signed) J. H. FOSTER & CO."

That afterwards, to wit, on the 19th day of January, 1886, said V. H. Caldwell, for value received, duly sold, assigned, and endorsed said promissory note to this plaintiff, and that plaintiff is now the owner and holder thereof.

That said note has not been paid nor any payments made thereon.

That the sum of $100.00 is a reasonable attorney's fee for instituting and prosecuting this action to collect said note; that there is now justly due and owing from defendant to plaintiff on said promissory note the sum of $800.00, with interest thereon at the rate of ten per cent. per annum from the 26th day of September, 1882, and the further sum of $100.00 attorney's fees, and that defendant fails, neglects, and refuses to pay the same or any part thereof.

799 For a further and separate cause of action against defendant plaintiff alleges—

That on the 12th day of July, 1881, the defendant was doing business in Albany, Oregon, under the name of J. H. Foster & Co.

That on said 12th day of July, 1881, the defendant, under said name of J. H. Foster & Co., for value received, made, executed, and delivered unto one Thomas I. Anderson his certain promissory note in words and figures as follows, to wit:

notary public in and for said county, came the above-named John Foster and James H. Foster and Martha J. Foster, his wife, who are known to me to be the identical persons described in and who executed the foregoing conveyance, and acknowledged that they executed the same; and the said Martha J. Foster, on examination separate and apart from her husband, acknowledged that she
789 executed the same freely and without fear or compulsion from any o e. .

In testimony whereof I have hereunto set my hand and official seal the day and year last above written.

N. B. HUMPHREY,
[L. S.] *Notary Public.*

Clerk's Certificate.

STATE OF OREGON, }
County of Linn, } ss:

I, J. P. Galbraith, county clerk in and for Linn county, Oregon, and clerk of the county court of the State of Oregon for the county of Linn, do hereby certify that the foregoing and attached copy of a mortgage has been by me carefully compared with the original record of the mortgage therein named as recorded on page 388, Book D, records of mortgages Linn county, Oregon, in my office and custody, and that it is a true and correct copy of all and the whole of said original record of said mortgage.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said county court this 10th day of June, 1887.

J. P. GALBRAITH, *Clerk.*

790 COMPLAINANT'S EXHIBIT "N." G. H. D., Master.

JAN'Y 10TH, '4.

Messrs. J. H. Foster & Co., Albany.

DEAR SIRS: We have to-day chartered the iron bark "Beemah" @ 41–3 for orders, W. K. We tried hard to get her @ 40, but could not do so. We can let you have what room you require up to 7,500 bbls. She will have 4 weeks in which to load. Please let us know how much you wish to ship & send us order for what may be ready at East Portland. The market is dull, but she should reach the market in a good time.

Yours truly, SIBSON, CHURCH & CO.

A true copy.

GEO. H. DURHAM, *Master.*

791 COMPLAINANT'S EXHIBIT "O." Geo. H. Durham, Master.

Dictated Letter.

JAN. 15TH, '4.

Mess. J. H. Foster & Co., Albany, Oreg.

DEAR SIRS: We have your favor of yesterday and note contents, and will reserve room for 500 tons "Magnolia" flour by the "Beemah." She is now ready for stiffening and would like to have an order for what flour is ready at East Portland. Will make advances as much as possible, though in the present state of the market shall have to cut down the last figure in order to make bills satisfactory to the bank. We yesterday telegraphed you at the request of Mr. Crawford to send down ten bales of three-ply twine which we hope to receive right away, as the mills are in want of the same.

Yours truly, SIBSON, CHURCH & CO.

A true copy of the original offered as and constituting Complainant's Exhibit "O."

GEO. H. DURHAM, *Master*.

792 U. S. Court.

NEAL
vs.
FOSTER *et al.* } No. 1258.

COMPLAINANT'S EXHIBIT "Q." Geo. H. Durham, Master.

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793 *Complaint.*

In the Circuit Court of the State of Oregon for Linn County.

W. H. GOLTRA, Plaintiff,
vs.
J. H. FOSTER, Defendant.

The plaintiff above named, for cause of action against the above-named defendant, complains and alleges—

That on or about the 10th day of July, 1883, the above-named defendant, for value received, made, executed, and delivered unto one William Baltimore his certain promissory note in words and figures as follows, to wit:

$900.00. ALBANY, OR., *July* 10, 1883.

Ninety days after date (without grace) I promise to pay to the order of William Baltimore nine hundred dollars for value re-

ceived, with interest at ten per cent. per annum from date until paid, both principal and interest payable only in United States gold coin.

No. 22.

(Signed) J. H. FOSTER.

That said note has not been paid nor any part thereof except the sum of $14.12 paid and duly endorsed thereon May 17th, 1884.

That afterward, to wit, on the 19th day of January, 1886, said William Baltimore, for value received, duly sold, assigned, and endorsed said note to this plaintiff, and that plaintiff is now the legal owner and holder thereof.

That there is now justly due and owing from defendant to plaintiff on said promissory note the sum of $900.00, with interest thereon from the 10th day of July, 1883, at the rate of 10 per cent. per annum, less the sum of $14.12, and that defendant fails, neglects, and refuses to pay the same or any part thereof.

794 For a further and separate cause of action against the above-named defendant plaintiff alleges—

That on the 11th day of January, 1884, the above-named defendant was doing business under the name and style of J. H. Foster & Co.

That on the said 11th day of January, 1884, said defendant, under said name of J. H. Foster & Co., for value received, made, executed, and delivered unto one H. R. Ramsey his certain promissory note in words and figures as follows, to wit:

"695\frac{13}{100}$. ALBANY, *Jan.* 11, 1884.

Thirty days after date (without grace) we promise to pay to the order of H. R. Ramsey six hundred & ninety-five $\frac{13}{100}$ dollars for value received, with interest at ten per cent. per annum from date until paid, both principal and interest payable only in United States gold coin.

No. —.

(Signed) J. H. FOSTER & CO.
R. A. F."

That afterward and before the commencement of this action said H. R. Ramsey, for value, duly sold, assigned, and transfer-ed said promissory note to one J. G. Powell, and that thereafter, to wit, on the 19th day of January, 1886, said J. G. Powell, for value received, duly sold, assigned, and endorsed said note to this plaintiff and that plaintiff is now the owner and holder thereof; that said note has not been paid nor any part thereof except the sum of $50.00 paid and duly endorsed thereon Jan'y 25, 1885, and the further sum of $10.00 paid and endorsed thereon June 19th, 1885; that there is now due and owing from defendant to plaintiff on said note the sum of $695.13, with interest thereon at the rate of 10 per cent. per annum from Jan. 11th, 1884, less the sum of $60.00, and that defendant fails, neglects, and refuses to pay the same or any part thereof.

For a further and separate cause of action against defendant plaintiff alleges that on the 8th day of January, 1884, defendant

was doing business in Albany, Oregon, under the name and
795 style of J. H. Foster & Co.

That on said 8th day of January, 1884, defendant, under said name and style of J. H. Foster & Co., for value received, duly made, executed, and delivered unto this plaintiff his certain promissory note in words and figures as follows, to wit:

$2,460$\frac{15}{100}$. ALBANY, *Jan'y 8th*, 1884.

Thirty days after date (without grace) we promise to pay to the order of W. H. Goltra two thousand four hundred & sixty $\frac{15}{100}$ dollars for value received, with interest at ten per cent. per annum from date until paid, both principal and interest payable only in United States gold coin.

No. —.

(Signed) J. H. FOSTER & CO.
R. A. F.

That plaintiff is now the owner and holder of said promissory note; that the same has not been paid nor any part thereof; that there is now justly due and owing from defendant to this plaintiff on said promissory note the sum of $2,460.15, with interest thereon at the rate of 10 per cent. per annum from the 8th day of January, 1884, and that defendant fails, neglects, and refuses to pay the same or any part thereof.

For a further and separate cause of action against defendant plaintiff alleges that on the 15th day of February, 1883, the above-named defendant was doing business under the name and style of J. H. Foster & Co.

That on said 15th day of February, 1883, the defendant, under said name and style of J. H. Foster & Co., for value received, made, executed, and delivered unto one W. C. Morgan his certain promissory note in words and figures as follows, to wit:

$1,400. ALBANY, OREGON, *February* 15, 1883.

One day after date (without grace) we promise to pay to the
796 order of W. C. Morgan fourteen hundred dollars for value received, with interest at nine per cent. per annum from date until paid, both principal and interest payable only in United States gold coin.

No. 1.

(Signed) J. H. FOSTER & CO.

That afterwards, to wit, on the 19th day of January, 1886, said note was, for value received, duly sold, assigned, and endorsed to this plaintiff, and that plaintiff is now the legal owner and holder thereof; that said note has not been paid, and that no payments have ever been made thereon except the sum of $400.00 paid and duly endorsed thereon August 31st, 1883.

That there is now justly due and owing from defendant to plaintiff on said promissory note the sum of $1,068.25, with interest thereon at the rate of 9% *per cent.* per annum from Aug. 31, 1883,

"$1,000. LINN Co., OREGON, *July 12th*, 1881.

One year after date, without grace, I promise to pay Thomas I. Anderson or his order the sum of ($1,000) one thousand dollars, for value received, with interest thereon in gold coin of the United States of America at the rate of ten per cent. per annum until paid; and in case suit is instituted to collect this money I promise to pay such sum as the court may adjudge reasonable for attorney's fees.

(Signed) J. H. FOSTER & CO."

That afterwards, to wit, on the 19th day of January, 1886, said note was by said Thomas I. Anderson, for value, duly sold, assigned, transferred, and endorsed to this plaintiff, and that plaintiff is now the owner and holder thereof.

That said note has not been paid nor any part or portion thereof except the interest thereon in full up to the 12th day of July, A. D. 1883.

That the sum of $125.00 is a reasonable attorney's fee for instituting and prosecuting this action for the collection of said note.

That there is now due and owing from defendant to plaintiff on said promissory note the sum of $1,000.00, with interest thereon at the rate of 10 per cent. per annum from the 12th day of July, 1883, and the further sum of $125.00 att'y's fees, and defendant fails, neglects, and refuses to pay the same or any part thereof.

800 For a further and separate cause of action against defendant plaintiff alleges—

That on the 16th day of December, 1882, this defendant was doing business in Albany, Oregon, under the name and style of J. H. Foster & Co.

That on said 16th day of December, 1882, the defendant, under said name of J. H. Foster & Co., for value received, made, executed, and delivered unto one Thomas I. Anderson his certain promissory note in words and figures as follows, to wit:

$600.00. ALBANY, OREG., *Dec. 16th*, 1882.

One year after date, without grace, I promise to pay to the order of Thomas I. Anderson, at Albany, six hundred dollars in gold coin of the United States of America, with interest thereon in like gold coin at the rate of ten per cent. per annum from date until paid, for value received, and in case suit or action is instituted to collect this note or any portion thereof I promise to pay such additional sum as the court may adjudge reasonable as attorneys' fees in said suit or action.

No. —. Due ——.

(Signed) J. H. FOSTER & CO.

That afterwards, to wit, on the 19th day of January, 1886, said note was by said Thomas I. Anderson, for value —, duly endorsed, assigned, and transferred to this plaintiff, and that plaintiff is now the legal owner and holder therof.

That said note has not been paid, nor have any payments been

made thereon except the sum of $60.00 interest for one year, paid and duly endorsed thereon Dec. 16, 1883.

That the sum of $74.00 is a reasonable attorney's fee for instituting and prosecuting this action for the collection of said note.

That there is now due and owing from defendant to plaintiff on said promissory note the sum of $600.00, with interest thereon
801 at the rate of ten per cent. per annum from Dec. 16th, 1883, and the further sum of $75.00 attorney's fees, and the defendant fails and neglects and refuses to pay the same or any part thereof.

For a further and separate cause of action against the defendant plaintiff alleges—

That on the 3rd day of February, 1883, defendant was doing business under the name and style of J. H. Foster & Co.

That on said 3rd day of February, 1883, for value received, defendant, under said name and style of J. H. Foster & Co., made, executed, and delivered to one Thomas I. Anderson his certain promissory note in words and figures as follows, to wit:

1,705. ALBANY, OREGON, *February* 3, 1883.

One day after date (without grace) we promise to pay to the order of Thomas I. Anderson seventeen hundred and five dollars, for value received, with interest at ten per cent. per annum from date until paid, both principal and interest payable only in United States gold coin.

No. 4.

(Signed) J. H. FOSTER & CO.

That afterwards, to wit, on the 19th day of January, 1886, said note was by said Thomas I. Anderson, for value received, duly assigned, endorsed, and transferred to this plaintiff, and that plaintiff is now the owner and holder thereof.

That said note has not been paid, nor have any payments been made thereon except the sum of $15.00 paid thereon March 15th, 1884.

That there is now justly due and owing from defendant to plaintiff on said promissory note the sum of $1,705.00, with interest thereon at the rate of ten per cent. per annum from the 3rd day of February, 1883, less the sum of $15.00.

For a further and separate cause of action against the above-named defendant plaintiff alleges—

That on and for a long time prior to the 5th day of Feb-
802 ruary, 1884, the defendant was and had been doing business in Albany, Oregon, under the name and style of J. H. Foster & Co.

That on the 5th day of February, 1884, and for a long time thereafter one W. S. Peters and one Jay W. Blain were, and for a long time prior thereto had been, partners doing business under the firm name and style of Peters & Blain.

That on and prior to the 15th day of July, 1884, one W. S. Peters and one C. H. Stewart were ever since, have been, and now

are partners doing business under the firm name and style of Peters & Stewart.

That on said 5th day of February, 1884, an account was stated between said W. S. Peters and Jay W. Blain, partners doing business under the firm name & style of Peters & Blain, and the defendant herein under his said name and style of J. H. Foster & Co.

That upon such statement a balance of $198.66 was found due to said W. S. Peters & J. W. Blain, partners under the firm name and style of Peters & Blain, from the defendant.

That the defendant, doing business under said name and style of J. H. Foster & Co., then and there promised and agreed to pay said Peters & Blain said balance of $198.11.

That thereafter, to wit, on or about the 15th day of July, 1884, said Peters & Blain, for a valuable consideration, duly sold, assigned, and transferred their said demand against defendant to said W. S. Peters and C. H. Stewart, partners doing business under the firm name and style of Peters and Stewart; and that thereafter, to wit, on or about the 19th day of January, 1886, said Peters & Stewart, for a valuable consideration, duly sold, assigned, and transferred their said demand against the defendant and the said indebtedness of the said defendant to this plaintiff, and that plaintiff is now the owner and holder thereof.

That said balance of $198.11 has not been paid nor any
803 part or *or* portion thereof, except the sum of $18.25 paid thereon April 1st, 1884, and the further sum of $10.19 paid thereon September 10th, 1884.

That there is now justly due and owing from defendant to plaintiff therein the full sum of $169.67, with interest thereon at the rate of 8% per annum from the 5th day of February, 1885.

For a further and separate cause of action against the above defendant plaintiff alleges—

That on the 28th day of December, 1883, the above-named defendant was doing business under the name and style of J. H. Foster & Co.

That on said 28th day of December, 1883, said defendant, under said name of J. H. Foster & Co., for value received, duly made, executed, and delivered unto one J. G. Powell his certain promissory note in words and figures as follows, to wit:

$223.35. ALBANY, *Dec.* 28, 1883.

One day after date (without grace) we promise to pay to the order of J. G. Powell two hundred & twenty-three $^{35}/_{100}$ dollars, for value received, with interest at ten per cent. per annum from date until paid, both principal and interest payable only in United States gold coin.

No. —.

(Signed) J. H. FOSTER & CO.
R. A. F.

That afterwards, to wit, on or about the 19th day of January, 1886, said J. G. Powell, for a valuable consideration, duly assigned,

transfer-ed, and endorsed said note to this plaintiff, and that plaintiff is now the owner and holder thereof.

That said note has not been paid nor any payments made thereon except the sum of one hundred dollars paid and duly endorsed thereon January 1st, 1884.

That there is now due and owing from defendant to plaintiff on said promissory note the sum of $123 $\frac{50}{100}$ and interest thereon at the rate of 10% per annum from the 1st day of January,
804 1884, and defendant fails, neglects, and refuses to pay the same or any part thereof.

For a further and separate cause of action against defendant, plaintiff alleges—

That on the 2nd day of January, 1883, the defendant was doing business in Albany, Oregon, under the name and style of J. H. Foster & Co.

That on said 2nd day of January, 1883, said defendant, under said name and style of J. H. Foster & Co., for value received, duly made, executed, and delivered unto one Mrs. C. Blount his certain promissory note in words and figures as follows, to wit:

$232.80. ALBANY, OREGON, *January* 2, 1883.

One day after date, without grace, we promise to pay to the order of Mrs. C. Blount, at Albany, Oregon, two hundred and thirty-two and $\frac{80}{100}$ dollars in gold coin of the United States of America, with interest thereon in like gold coin at the rate of ten per cent. per annum from date until paid for value received; and in case suit or action is instituted to collect this note or any portion thereof we promise to pay such additional sum as the court may adjudge reasonable as attorneys' fees in said suit or action.

No. —. Due ——.

(Signed) J. H. FOSTER & CO.

That afterwards, to wit, on or about the 19th day of January, 1886, said Mrs. C. Blount, for value received, duly sold, assigned, and endorsed said note to the plaintiff herein, and that plaintiff is now the owner and holder thereof.

That said note has not been paid nor any payments made thereon except the interest thereon to January 2nd, 1884.

That there is now due and owing from defendant to this plaintiff on said promissory note the full sum of $232.80 and interest thereon at the rate of 10% per annum from the 2nd day of January, 1884, and the further sum of $30.00, which plaintiff alleges is a
805 reasonable attorney fee for instituting and prosecuting this action for the collection of said note.

For a further and separate cause of action against defendant plaintiff alleges—

That on the 1st day of April, 1884, the defendant was doing business under the name and style of J. H. Foster & Co.

That on and prior to the 1st day of April, A. D. 1884, the "Albany Farmer's Co." was, ever since has been, and now is a corporation duly incorporated under the laws of the State of Oregon, and

having its principal office in the city of Albany, in Linn county, Oregon.

That on said 1st day of April, 1884, said defendant, under said name and style of J. H. Foster & Co., for value received, duly made, executed, and delivered to said Albany Farmer's Co. his certain promissory note in words and figures as follows, to wit:

$1,497.24. ALBANY, *April 1st*, 1884.

One day after date, without grace, we promise to pay to the order of Albany Farmer's Co. fourteen hundred and ninety-seven $\frac{24}{100}$ dollars, for value received, with interest at ten per cent. per annum from date until paid, both principal and interest payable only in United States gold coin.

No. —.

(Signed) J. H. FOSTER & CO.

That afterwards, to wit, on or about the 19th day of January, 1886, said Albany Farmer's Co., for value received, duly sold, assigned, and endorsed said note to this plaintiff, and that plaintiff is now the owner and holder thereof.

That said note has not been paid nor any payments made thereon, and that there is now due and owing from defendant to this plaintiff the sum of $1,497.24 and interest thereon at the rate of 10% per annum from the 1st day of April, 1884, on said promissory note, and defendant fails, neglect-, and refuses to pay the same or any part thereof.

806 Wherefore plaintiff prays judgment herein against the above-named defendant—

1st. For the sum of nine hundred dollars in U. S. gold coin, with interest thereon at the rate of ten per cent. per annum from July 10th, 1883, until paid, less $14.12.

For the further sum of $695.13 in U. S. gold coin, with interest thereon at the rate of 10% per annum from the 11th day of January, 1884, until paid, less $60.00.

For the further sum of $2,460.15 in U. S. gold coin, with interest thereon at the rate of 10% per annum from the 8th day of January, 1884, until paid.

For the further sum of $1,068.25 in U. S. gold coin, with interest thereon at 9% per annum from August 31, 1883, until paid.

For the further sum of $843.10 in U. S. gold coin, with interest thereon at the rate of 10% per annum from June 27, 1883, until paid.

For the further sum of $725.70 in U. S. gold coin, with interest thereon at 10% per annum from January 21st, 1884, until paid.

For the further sum of $800.00 in U. S. gold coin and interest thereon at 10% per annum from September 26th, 1882, until paid, and the further sum of $100, att'ys' fees.

For the further sum of $1,000.00 in U. S. gold coin, with interest thereon at 10% per annum from July 12th, 1883, until paid, and $125.00, att'ys' fees.

For the further sum of $600.00 in U. S. gold coin, with interest

thereon at 10% per annum from Dec. 16th, 1883, until paid, and $75.00, att'ys' fees.

For the further sum of $1,705.00, with interest thereon at the rate of 10% per annum from the 3rd day of February, 1883, until paid, less $15.00.

For the further sum of $169.67, with interest thereon at
807 8% per annum from February 5th, 1884, until paid.

For the further sum of $123.50, with interest thereon at the rate of 10% per annum from the first day of January, 1884, until paid.

For the further sum of $232.80, with interest thereon at the rate of 10% per annum from the 2nd day of January, 1884, until paid, and the sum of $30.00, att'ys' fee.

For the further sum of $1,497.24, with interest thereon at the rate of 10% per annum from the 1st day of April, A. D. 1884, until paid, and for his costs and disbursements herein to be taxed.

WEATHERFORD & BLACKBURN AND
WOLVERTON & IRVINE,
Attorneys for Plaintiff.

STATE OF OREGON, } ss:
County of Linn, }

I, W. H. Goltra, being first duly sworn, say I am the plaintiff herein and the foregoing complaint is true as I verily believe.

W. H. GOLTRA.

Sworn to & subscribed before me this 23rd day of January, 1886.

[L. S.] D. R. N. BLACKBURN,
Notary Public.

(Endorsed:) In the circuit court of the State of Oregon for Linn county. W. H. Goltra, plaintiff, *vs.* J. H. Foster, defendant. Complaint. Filed January 23d, 1886. D. Andrews, clerk. Weatherford & Blackburn & Wolverton & Irvine, att'ys for pl'ff.

808 *Summons.*

In the Circuit Court of the State of Oregon for the County of Linn.

W. H. GOLTRA, Plaintiff,
vs.
J. H. FOSTER, Defendant.

To J. H. Foster, the above-named defendant:

In the name of the State of Oregon.

You are hereby required to appear and answer the complaint of the above plaintiff in the above-entitled court, now on file with the clerk of said court, within ten days from the date of the service of this summons upon you if served in Linn county, Oregon, but if served in any other county in the State of Oregon then within twenty days from the date of the service of this summons upon you; and you are hereby notified that if you fail to appear and answer said

complaint as hereby required the plaintiff will take judgment against you for the sum of $900.00 in U. S. gold coin, with interest thereon in like coin at the rate of ten per cent. per annum from the 10th day of July, 1883, until paid, less the sum of $14.12 paid thereon on the — day of ——, 188–; the further sum of $695.13 in U. S. gold coin, with interest thereon in like coin at the rate of ten per cent. per annum from the 11th day of Jan'y, 1884, until paid, less the sum of $60.00 paid thereon on the — day of ——, 188–; the further sum of $2,460.15 in U. S. gold coin, with interest thereon from January 8th, 1884, at the rate of ten per cent. per annum until paid; the further sum of $1,068.25 in U. S. gold coin, with interest thereon from Aug. 31st, 1883, at the rate of nine per cent. per annum until paid; the further sum of $843.10 in U. S. gold coin, with interest thereon from June 27th, 1883, at ten per cent. per annum until paid; the further sum of $725.70 in U. S. gold coin,
809 with interest thereon in like gold coin from January 21st, 1884, at the rate of ten per cent. per annum until paid; the further sum of $800.00 in U. S. gold coin, with interest thereon at the rate of ten per cent. per annum from Sept. 26th, 1882, until paid and $100.00 attorney's fees; the further sum of $1,000.00 in U. S. gold coin, with interest thereon at the rate of ten per cent. per annum from July 12th, 1883, until paid, and $125.00 attorney's fees; the further sum of six hundred dollars in U. S. gold coin, with interest thereon at the rate of 10 % per annum from Dec. 16th, 1883, until paid, and $75.00 att'y's fees; the further sum of $1,705.00, with interest thereon at the rate of 10 % per annum from Feb. 3rd, 1883, until paid; fees, $15.00.

The further sum of $169.67, with interest thereon at the rate of 8 % per annum from February 5th, 1885.

The further sum of $123.50, with interest thereon from Jan. 1st, 1884, at the rate of ten per cent. per annum until paid.

The further sum of $232.80, with interest thereon at the rate of 10 % per annum from January 2, 1884, until paid and $30.00 att'y's fees.

The further sum of $1,497.24, with interest at 10 % per annum from April 1st, 1884, until paid, and the costs and disbursements of this action to be taxed.

WEATHERFORD & BLACKBURN AND
WOLVERTON & IRVINE,
Att'ys for Plaintiff.

STATE OF OREGON,
County of Linn, } ss:

I hereby certify that I served the annexed summons in Linn county, Oregon, on the 26th day of January, 1886, on the therein-named defendant, J. H. Foster, by delivering to him in person a copy of said summons prepared and certified to by me as sheriff,
810 together with a copy of the complaint in the therein-entitled action prepared and certified to by D. Andrews, Co. clerk.

Dated this 26th day of Jan'y, 1886.

J. K. CHARLTON,
Sheriff of Linn Co., Oregon,
Per JAS. J. CHARLTON, *Deputy.*

(Endorsed:) In the circuit court in and for Linn county, Oregon. W. H. Goltra, plaintiff, *vs.* J. H. Foster, defendant. Summons. Rec'd Jan'y 23rd, 1886. J. K. Charlton, sheriff of Linn county, Oregon, per Jas. L. Charlton, deputy. Weatherford & Blackburn and Wolverton & Irvine, att'ys for pl'ff. Filed Jan. 26, 1886. D. Andrews, clerk, by F. M. Redfield, deputy.

Motion.

In the Circuit Court of the State of Oregon for Linn County.

W. H. GOLTRA, Pl'ff,
vs.
J. H. FOSTER, Def't.

Comes now the plaintiff and moves the court and hereby
811 applies for judgment as prayed for in plaintiff's complaint filed herein & for default therein against the defendant, as time for appearing and answering has expired.

WEATHERFORD & BLACKBURN &
WOLVERTON & IRVINE, *Att'ys for Pl'ff.*

(Endorsed:) In the circuit court of the State of Oregon for Linn county. W. H. Goltra, pl'ff, *vs.* J. H. Foster, def't. Motion. Filed February 6th, 1886. D. Andrews, clerk. Wolverton & Irvine & Weatherford & Blackburn, att'ys for pl'ff.

Journal Entry.

STATE OF OREGON,
County of Linn, } *ss:*

Circuit Court of the State of Oregon for the County of Linn, in Vacation after the October Term, A. D. 1885, to wit, the 6th Day of February, A. D. 1886.

W. H. GOLTRA, Plaintiff,
vs.
J. H. FOSTER, Defendant.

Now, at this day, comes the plaintiff above named, by Wolverton & Irvine and Weatherford & Blackburn, his attorneys, and files his written application with the clerk of this court for the entry of the default of the defendant herein and for judgment against defendant, as specified in the summons and complaint herein; and it appearing that the above-entitled action is an action arising upon contracts for the recovery of money only; that the defendant herein
was duly and personally served with summons herein in
812 Linn county, Oregon, on the 26th day of January, A. D. 1886, by the sheriff of said county, by said sheriff delivering to said defendant J. H. Foster in person a copy of the original summons herein, prepared and certified to by said sheriff, together with a copy of the complaint herein, prepared and certified to by D. An-

drews, county clerk of Linn county, Oregon, and *ex officio* clerk of this court;

That said defendant has failed, neglected, and refused and still fails, neglects, and refuses to appear and answer or otherwise plead to the complaint herein; that no answer or other pleading has been filed with the clerk of this court within the time specified in the summons, to wit, ten days; and that no other or further time has been granted by the court or judge thereof in which said defendant might appear and answer the complaint herein:

It is therefore ordered, adjudged, and considered that said defendant is in default, and the default of said defendant is now here entered against defendant; and now it appearing that there is justly due and owing from defendant to plaintiff, on the first cause of action set out in plaintiff's complaint, the sum of $1,117.38, with accruing interest from this date at the rate of 10% per annum, as specified in the summons herein, and that such cause of action arose upon a contract, to wit, the first promissory note set out in plaintiff's complaint;

And it further appearing that there is now justly due and owing from defendant to plaintiff on the second cause of action set out in plaintiff's complaint herein the sum of $778.95, with accruing interest from this date until paid at 10% per annum, as specified in the summons herein, and that such cause of action arose upon a contract, to wit, the second promissory note set out in plaintiff's complaint;

And it further appearing that there is now justly due and
813 owing from defendant to plaintiff on the third cause of action set out in plaintiff's complaint the sum of $2,971.32 and accruing interest from this date at the rate of 10% per annum, as specified in the summons herein, and that said third cause of action arose upon a contract, to wit, the third promissory note set out in plaintiff's complaint;

And it further appearing that there is now justly due and owing from defendant to plaintiff on the fourth cause of action set out in plaintiff's complaint the sum of $1,302.20, with accruing interest thereon from this date at the rate of 9% per annum, as specified in the summons herein, and that said fourth cause of action arose upon a contract, to wit, the fourth promissory note set out in plaintiff's complaint;

And it further appearing that there is now justly due and owing from defendant to plaintiff on the fifth cause of action set out in plaintiff's complaint the sum of $1,063.24, with accruing interest from the date hereof at 10% per annum, as specified in the summons herein, and that said fifth cause of action arose upon a contract, to wit, the fifth promissory note set out in plaintiff's complaint;

And it further appearing that there is now justly due and owing from defendant to plaintiff upon the sixth cause of action set out in plaintiff's complaint the sum of $873.86, with accruing interest from this date until paid at the rate of 10% per annum, as specified in the summons herein, and that said sixth cause of action arose upon a contract, to wit, the sixth promissory note set out in plaintiff's complaint;

And it further appearing that there is now justly due and owing

from defendant to plaintiff on the seventh cause of action set out in plaintiff's complaint the sum of $1,063.90, with accruing interest from this date until paid at 10% per annum, and $100.00 at-
814 torney's fees, as specified in the summons herein, and that said seventh cause of action arose upon a contract, to wit, the seventh promissory note set out in plaintiff's complaint;

And it further appearing that there is now justly due and owing from defendant to plaintiff on the eighth cause of action set out in plaintiff's complaint the sum of $1,256.67, with accruing interest from this date at the rate of 10% per annum, and $125.00 att'y's fees, as specified in the summons herein, and that said eighth cause of action arose upon a contract, to wit, the eighth promissory note set out in plaintiff's complaint;

And it further appearing that there is now due and owing from defendant to plaintiff on the ninth cause of action set out in plaintiff's complaint the sum of $728.33, with accruing interest thereon at the rate of 10% per annum from this date, and the further sum of $75.00 att'y's fees, as specified in the summons herein, and that said cause of action arose upon a contract, to wit, the ninth promissory note set out in plaintiff's complaint;

And it further appearing that there is now justly due and owing from defendant to plaintiff on the tenth cause of action set up in plaintiff's complaint the sum of $2,202.92, and accruing interest thereon at the rate of ten per cent. per annum from this date, as specified in the summons herein, and that said tenth cause of action arose upon a contract, to wit, the promissory note set out in said tenth cause of action;

And it further appearing that there is now justly due and owing from defendant to plaintiff on the eleventh cause of action alleged in plaintiff's complaint the sum of $196.80, with accruing interest from the date hereof at 8% per annum, as specified in the summons herein, and that said eleventh cause of action arose upon a contract;

And it further appearing that there is now justly due and owing from defendant to plaintiff on the twelfth cause of action set
815 forth in plaintiff's complaint the sum of $149.25, with accruing interest thereon from this date at 10% per annum, as specified in the summons herein, and that said cause of action arose upon a contract, to wit, the promissory note set out in full in said 12th cause of action;

And it further appearing that there is now justly due and owing from defendant to plaintiff on the 13th cause of action alleged in plaintiff's said complaint the sum of $281.50, with accruing interest thereon at the rate of ten per cent. per annum, and the further sum of $30.00 att'y's fees, as specified in the summons herein, and that said cause of action arose upon a contract, to wit, the promissory note set forth in said 13th cause of action;

And it further appearing that there is now justly due and owing from defendant to plaintiff on the 14th cause of action set forth in pl'ff's complaint the sum of $1,773.81, with accruing interest thereon at the rate of 10% per annum from this date until paid, as specified

in the summons herein, and that said 14th cause of action arose upon a contract:

Now, therefore, by virtue of the law and the premises it is ordered, adjudged, and considered that plaintiff do have and recover of and from defendant the sum of $14,266.34, with interest thereon at the rate of 10% per annum from the date hereof until paid, and the further sum of $1,302.20, with accruing interest thereon at the rate of 9% per annum from this date until paid; the further sum of $196.86, with accruing interest from the date hereof until paid at the rate of 8% per annum; the further sum of $330.00 attorney's fees, and the costs and disbursements, taxed at $24.30; and that execution issue to enforce this judgment.

(Sign-) D. ANDREWS,
County Clerk of Linn County, Oregon, and ex Officio
816 *Clerk of the Circuit Court of the State of Oregon for the County of Linn.*

STATE OF OREGON, } ss:
County of Linn, }

I, J. P. Galbraith, county clerk of Linn county, State of Oregon, and *ex officio* clerk of the circuit court for the State of Oregon for said county of Linn, do hereby certify that the foregoing and attached copy of judgment-roll has been by me carefully compared with the original judgment-roll in the case of W. H. Goltra, pl'ff, *vs.* J. H. Foster, def't, in said circuit court, to recover money now in my office and custody, and that it is a true and correct copy of all and the whole of said original judgment-roll.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court this 31st day of March, 1887.

[SEAL OF CIRCUIT COURT.] J. P. GALBRAITH,
County Clerk.

(Endorsed:) In the circuit court of the State of Oregon for Linn county. Judgment-roll. W. H. Goltra, plaintiff, *vs.* J. H. Foster, defendant. Judgment rendered for plaintiff at the vacation after October term of said court on the 6th day of February, 1886. Docketed 188–. Complaint filed Jan'y 23, 1886. Docket No. —. Case No. 4533. D. Andrews, county clerk. Wolverton & Irvine & Weatherford & Blackburn, att'y- for plaintiff. R. S. Strahan, att'y for defendant.

817 U. S. Court.

NEAL
vs.
FOSTER *et al.* } No. 1258.

COMPLAINANTS' EXHIBIT "R." Geo. H. Durham, Master.

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818 *Complaint.*

In the Circuit Court of the State of Oregon for Linn County.

J. S. LILES, Plaintiff,
vs.
J. H. FOSTER and JOHN A. CRAWFORD, Partners Doing Business Under the Firm Name and Style of J. H. Foster & Co.

Plaintiff, for cause of action against the above-named defendants, complains and alleges—

That this plaintiff is informed and believes that on the 23rd day of February, 1884, and for a long time prior thereto the above-named defendants, J. H. Foster and John A. Crawford, were partners doing business in Albany, Oregon, under the firm name and style of J. H. Foster & Co.

That on the said 23rd day of February, A. D. 1884, said defendants, under said name and style of J. H. Foster & Co., made, executed, and delivered unto this plaintiff, for value received, their certain promissory note in words and figures as follows, to wit:

863.40. ALBANY, *Feb.* 23, 1884.

One day after date, without grace, we promise to pay to the order of Joseph S. Lisles eight hundred & sixty-three $\frac{40}{100}$ dollars, for value received, with interest at ten per cent. per annum from date until paid, both principal and interest payable only in United States gold coin.

No. —.

(Signed) J. H. FOSTER & CO.,
R. A. F.

That plaintiff is still the owner and holder of said note, and that the same has not been paid nor any part thereof.

Wherefore plaintiff prays judgment against defendant for the sum of $863.40, with interest thereon from Feb. 23, 1884, at 10 %
819 per annum and his costs and disbursements herein to be taxed.

WEATHERFORD & BLACKBURN &
WOLVERTON & IRVINE,
Att'ys for Pl'ff.

STATE OF OREGON, } ss:
County of Linn, }

I, J. H. Lisle, being first duly sworn, say that I am the plaintiff above named and that the foregoing complaint is true, as I verily believe.

J. H. LISLE.

Subscribed and sworn to before me this 23rd day of February, A. D. 1886.

[SEAL.] O. H. IRVINE,
Notary Public.

(Endorsed:) In the circuit court of the State of Oregon for Linn county. No. 39. J. H. Lisles, plaintiff, *vs.* J. H. Foster & Co., defendant. Filed Feb. 24, 1886. D. Andrews, clerk. 170. Weatherford and Blackburn, att'ys for pl'ff.

Summons.

In the Circuit Court of the State of Oregon for the County of Linn.

J. H. LISLES, Plaintiff,
vs.
J. H. FOSTER and JOHN A. CRAWFORD, Partners Doing Business Under the Firm Name and Style of J. H. Foster & Co., Defendants.

To J. H. Foster and John A. Crawford, the above-named defendants:

In the name of the State of Oregon.

You are hereby required to appear and answer the com-
820 plaint of the above plaintiff in the above-entitled court, now on file with the clerk of said court, within ten days from the date of the service of this summons upon you if served in Linn county, Oregon, but if served in any other county in the State of Oregon, then within twenty days from the date of the service of this summons upon you; and you are hereby notified that if you fail to appear and answer said complaint as hereby required the plaintiff will take judgment against you for the sum of $863.40, with interest thereon from February 23rd, 1884, at the rate of ten per cent. per annum, and the costs and disbursements of this action to be taxed.

WEATHERFORD & BLACKBURN AND
WOLVERTON & IRVINE,
Attorneys for Plaintiff.

Rec'd Feb. 24th, 1886.

J. K. CHARLTON,
Sheriff of Linn Co., Oregon,
Per JAS. J. CHARLTON, *Deputy.*

STATE OF OREGON, *County of Linn,* } ss:

I hereby certify that I have served the annexed summons in Linn county, Oregon, on the 25th day of February, 1886, on the therein-named defendants, J. H. Foster and John A. Crawford, by delivering to each of them in person a copy of said summons prepared and certified to by me as sheriff, together with a copy of the complaint in the therein-entitled action prepared and certified to by D. Andrews, county clerk.

J. K. CHARLTON,
Sheriff of Linn Co., Oregon,
Per JAS. J. CHARLTON, *Deputy.*

(Endorsed:) J. S. Lisles *vs.* J. H. Foster & Co. Filed Feb. 26, 1886. D. Andrews, clerk, by F. M. Redfield, deputy.

821 *Motion to Strike Out.*

In the Circuit Court of the State of Oregon for Linn County.

J. S. LISLES, Plaintiff,
vs.
J. H. FOSTER & JOHN A. CRAWFORD, sued as Partners, Defendants.

The defendant John A. Crawford comes and moves the court to strike out out of the plaintiff's complaint the following words:

"That the plaintiff is informed and believes that on the 23rd day of February, 1884, and for a long time prior thereto the above-named defendants, J. H. Foster and John A. Crawford, were partners doing business in Albany, Oregon, under the firm name and style of J. H. Foster & Co," for the reason that the same is sham, frivolous, and irrelevant and not pleaded in issuable form.

R. S. STRAHAN,
Att'y for J. A. Crawford.

(Endorsed:) Circuit court Linn county. J. S. Lisles *vs.* J. H. Foster & Co. Motion to strike out. Filed Mar. 1, 1886. D. Andrews, clerk, by F. M. Redfield, deputy. R. S. Strahan, att'y for J. A. C.

Amended Complaint.

In the Circuit Court of the State of Oregon for Linn County.

J. S. LISLE, Plaintiff,
vs.
J. H. FOSTER and JOHN A. CRAWFORD, Partners Doing Business Under the Firm Name and Style of J. H. Foster & Co., Defendants.

822 Plaintiff, for cause of action and amended complaint against the above-named defendants, complains and alleges—

That this plaintiff is informed and believes, and therefore alleges, that on the 23rd day of February, A. D. 1884, and for a long time prior thereto the above-named defendants, J. H. Foster and John A. Crawford, were partners doing business in Albany, Oregon, under the firm name and style of J. H. Foster & Co.

That on the said 23rd day of February, A. D. 1884, said defendants, under said name and style of J. H. Foster & Co., for value received, made, executed, and delivered unto this plaintiff their certain promissory note in words and figures as follows, to wit:

863.40. ALBANY, *Feb.* 23, 1884.

On day after date, without grace, we promise to pay to the order of Joseph S. Liles eight hundred and sixty-three $\frac{40}{100}$ *100* dollars, for value received, with interest at ten per cent. per annum from date

until paid, both principal and interest payable only in United States gold coin.

No. —.

(Signed) J. H. FOSTER & CO.,
R. A. F.

That plaintiff is now the owner and holder of said note, and that the same has not been paid nor any part thereof nor any payments made thereon, and that there is now justly due and owing from defendant to plaintiff on said note the full amount thereof, to wit, $863.40, with interest thereon from Feb. 23rd, 1884, at the rate of 10% per annum.

Wherefore plaintiff prays judgment against the defendants for the sum of $863.40, with interest thereon at the rate of 10% per annum from the 23rd day of February, A. D. 1884, and his costs and disbursements herein to be taxed.

WEATHERFORD & BLACKBURN AND
WOLVERTON & IRVINE,
Attorneys for Plaintiff.

STATE OF OREGON, } ss:
County of Linn, }

823 I, J. S. Liles, being first duly sworn, say that I am the plaintiff above named, and that the foregoing amended complaint is true, as I verily believe.

J. S. LILES.

Subscribed and sworn to before me this 8th day of March, 1886.

[L. S.] CHAS. E. WOLVERTON,
Notary Public.

(Endorsed:) In the circuit court of the State of Oregon for Linn county. J. S. Liles, plaintiff, *vs.* J. H. Foster & Co., defendant. Amended complaint. Filed Mar. 9, 1886. D. Andrews, clerk, by Geo. I. Foster, deputy. Weatherford & Blackburn & Wolverton & Irvine, att'ys for pl'ff.

Separate Answer of J. A. Crawford.

In the Circuit Court of the State of Oregon for Linn County.

J. S. LILES, Plaintiff,
vs.
J. H. FOSTER and JOHN A. CRAWFORD, Defendants.

The defendant John A. Crawford, for answer to the plaintiff's amended complaint herein, denies that the plaintiff is informed or believes that on the 23rd day of February, 1884, or on any other day or time or for a long or any time prior thereto the def'ts, J. H. Foster and John A. Crawford, were partners doing business in Albany, Oregon, or elsewhere under the firm name or
824 style of J. H. Foster & Co. or under any other name or style.

Denies that on the 23rd day of February, 1884, or on any other

day or time, or for a long or any time prior thereto, nor at any time, were the defendants partners doing business at Albany or elsewhere under the firm name of or style of J. H. Foster & Co. or otherwise.

Denies that on the said 23rd day of February, 1884, or on any other day or time said defendants, under said name or style of J. H. Foster & Co. or otherwise, for value received or otherwise, executed or delivered unto this plaintiff their certain or any promissory note in the words or figures mentioned in the complaint or otherwise, or that this defendant, by the name of J. H. Foster & Co. or any name whatever, at any time executed, signed, or delivered to the plaintiff or to any other person the promissory note described in plaintiff's complaint or any promissory note to the said plaintiff whatever.

Denies any knowledge or information thereof sufficient to form a belief as to whether the pl'ff is now the owner or holder of said note or as to whether the same had not been paid or any part thereof

Denies that there is now or at any time has been justly or otherwise due or owing from the defendants or from this defendant to the pl'ff on said note or otherwise the full amount thereof, to wit, $863.40, or any sum with interest thereon from Febr. 23, 1884, or from any other day or time at the rate of ten per cent. per annum or at any rate whatever.

Wherefore this defendant demands to be discharged with his costs and disbursements.

R. S. STRAHAN &
FLINN & CHAMBERLAIN,
Att'ys for Def't Crawford.

825 STATE OF OREGON, } *ss:*
County of Linn, }

I, John A. Crawford, being sworn, say I am one of the defendants herein, and that I believe the foregoing answer to be true.

JOHN A. CRAWFORD.

Sworn to and subscribed before me the 10th day of March, 1886.

[L. S.] R. L. DORRIS,
Notary Public.

(Endorsed:) Circuit court Linn county. J. S. Liles *vs.* J. H. Foster & John A. Crawford. Separate answer of John A. Crawford. Filed Mar. 10, 1886. D. Andrews, clerk, by Geo. I. Foster, deputy. R. S. Strahan & Flinn & Chamberlain, att'ys for Crawford.

Journal Entry.

Be it remembered that at a regular term of the circuit court of the State of Oregon for Linn county begun and held in the court-house, in the city of Albany, in said county and State, on Monday, the 8th day of March, 1886, the same being the time fixed by law, when were present the following officers, to wit—the Hon. R. P. Boise, judge, presiding; the Hon. Geo. E. Chamberlain, dist. attorney; D. Au-

drews, clerk; J. K. Charlton, sheriff—when, on Monday,
826 March 8th, A. D. 1886, or the first judicial day of said term, among other, the following proceedings were had, to wit:

J. S. LILE, Plaintiff,
vs.
J. H. FOSTER, Doing Business for J. H. Foster & Co., Defendants.

Now, at this day, this cause came on to be heard, the plaintiff appearing by Wolverton and Irvine and Weatherford & Blackburn, his attorneys, and the defendant by R. S. Strahan, his attorney; whereupon this cause came on to be heard upon motion of the defendant to strike out a portion of the complaint, which motion is sustained by the court, and it is ordered that plaintiffs have leave to file — amend his complaint.

And on Friday, March 12th, 1886, or the fifth judicial day of said term, the following, among other, proceedings were had, to wit:

J. S. LILES, Plaintiff,
vs.
J. H. FOSTER & JOHN A. CRAWFORD, Partners Doing Business under the Firm Name and Style of J. H. Foster & Co., Defendants.

Now, on this day, this cause came on to be heard, the plaintiff appearing by Weatherford and Blackburn and Wolverton & Irvine, his attorneys, and the defendant John A. Crawford by R. S. Strahan & Flinn & Chamberlain, his attorneys, and it appearing to the court that the defendant J. H. Foster was duly and personally served with summons in the above-entitled action in Linn county, Oregon, by the sheriff of said county on the 23d day of February, 1886, and that more than ten days have elapsed and the defendant has failed, neglected, and refused and still fails, neglects, and
827 refuses to appear and answer or otherwise plead to the complaint of the plaintiff filed herein, though now at this time being thrice solemnly called in open court comes not, but makes default, upon motion of counsel of plaintiff it is ordered by the court that said defendant is in default, which default of J. H. Foster is here now entered of record. Whereupon, on motion of plaintiff, it is now ordered that the plaintiff be nonsuited as to J. A. Crawford, one of the defendants herein, and that this cause be dismissed as to J. A. Crawford; and it further appearing to the court that the defendant J. H. Foster is justly indebted to the plaintiff in the sum of $——, with interest thereon at the rate of 10% per annum from this date, and his costs and disbursements herein, taxed at $——, for which execution may issue, and it is further ordered by the court the defendant J. A. Crawford have judgment against the plaintiff for his costs and disbursements herein, taxed at $——, for which the proper execution may issue.

R. P. BOISE, *Judge.*

STATE OF OREGON, } ss:
County of Linn, }

I, J. P. Galbraith, county clerk of Linn county, State of Oregon, and *ex officio* clerk of the circuit court for the State of Oregon for said county of Linn, do hereby certify that the foregoing and attached copy of judgment-roll has been by me carefully compared with the original judgment-roll in the case of J. S. Liles, pl'ff, *vs.* J. H. Foster & Co., def't's, in said circuit court to recover money now in my office and custody, and that it is a true and correct copy of all and the whole of said original judgment-roll.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court this 1st day of April, 1887.

[Seal Circuit Court.]

J. P. GALBRAITH,
County Clerk.

828 (Endorsed:) In the circuit court of the State of Oregon for Linn county. Judgment-roll. J. S. Liles, plaintiff, *vs.* J. H. Foster, defendant. Judgment rendered for pl'ff at the March term of said court, on the 12 day of March, 1886. Docketed ——, 188–. Complaint filed Feb'y 24, 1886. Docket No. —. Case No. 4541. D. Andrews, county clerk. Weatherford & Blackburn, att'y- for plaintiff. R. S. Strahan, att'y for defendant.

829 U. S. Court.

NEAL
vs.
FOSTER *et al.* } No. 1258.

COMPLAINANT'S EX. "S." Geo. H. Durham, Master.

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830 *Complaint.*

In the Circuit Court of the State of Oregon for Linn County.

W. H. GOLTRA, Plaintiff,
vs.
J. H. FOSTER, Doing Business under the Name and Style of J. H. Foster & Co., Defendant.

Plaintiff, for a first cause of action against the above-named defendant, complains and alleges—

That heretofore, to wit, on the 4th day of February, 1884, the above-named defendant was doing business under the name and style of J. H. Foster & Co.

That on said 4th day of February, 1884, said defendant, under

said name and style of J. H. Foster & Co., for value received, made, executed, and delivered unto one Alden Hulbert his certain promissory note in words and figures as follows:

"210.00. ALBANY, *Feb.* 4, 1884.

Thirty days after date (without grace) we promise to pay to the order of Alden Hulburt two hundred & ten dollars, for value received, with interest at ten per cent. per annum from date until paid, both principal and interest payable only in United States gold coin.

No. —.

(Signed) J. H. FOSTER & CO.
R. A. F."

That afterwards, to wit, on or about the 28th day of January, 1886, said Alden Hulburt, for value received, duly sold, assigned, endorsed, and transfer-ed said note and the debt evidenced thereby to this plaintiff, and that plaintiff is now the owner and holder thereof.

That said note has not been paid nor any payments made thereon; that there is now justly due and owing from defendant to
831 plaintiff on said promissory note the full sum of $210.00 and interest thereon at the rate of ten % per annum from the 4th day of February, 1884, and defend*n*at fails, neglects, and refuses to pay the same or any part thereof.

For a further and seperate and second cause of action herein against the above-named defendant plaintiff alleges—

That on the 4th day of February, 1884, defendant was doing business in Albany, Oregon, under the firm name and style of J. H. Foster & Co.

That on said 4th day of February, 1884, said defendant, under said name and style of J. H. Foster & Co., for value received, made, executed, and delivered unto one Austin Hulburt his certain promissory note in words and figures as follows, to wit:

$368.70. ALBANY, *Feb. 4th*, 1884.

Thirty days after date (without grace) we promise to pay to the order of Austin Hulburt three hundred and sixty-eight $\frac{70}{100}$ dollars, for value received, with interest at ten per cent. per annum from date until paid, both principal and interest payable only in United States gold coin.

No. —.

(Signed) J. H. FOSTER & CO.
R. A. F.

That afterwards, to wit, on or about the 28th day of January, 1886, said Austin Hulburt, for value, duly sold, assigned, and endorsed said note to this plaintiff, and that plaintiff is now the legal owner and holder thereof.

That said note has not been paid nor any payments made thereon, and that the whole amount thereof, to wit, the sum of $368.70, together with interest thereon at the rate of 10 % per annum from

Feb. 4th, 1884, is now justly due and owing from defendant to plaintiff therein, and defendant fails, neglects, and refuses to pay the same or any part thereof.

For a further and separate and third cause of action herein
832 plaintiff alleges that on the 4th day of February, 1884, defendant was doing business in Albany, Oregon, under the name and style of J. H. Foster & Co.

That on sai- 4th day of February, 1884, defendant, under said name and style of J. H. Foster & Co., for value received, made, executed, and delivered unto one W. J. Hulburt his certain promissory note in words and figures as follows, to wit:

$207.50. ALBANY, *Feb.* 4, 1884.

Thirty days after date (without grace) we promise to pay to the order of W. J. Hulburt two hundred & seven .50 dollars, for value received, with interest at ten per cent. per annum from date until paid, both principal and interest payable only in United States gold coin.

No. —.

(Signed) J. H. FOSTER & CO.
R. A. F.

That afterwards, to wit, on the 28th day of January, 1886, said W. J. Hulburt, for value, duly sold, assigned, and endorsed said note and the debt evidenced thereby to this plaintiff, and that plaintiff is now the legal owner and holder thereof.

That said note has not been paid nor any payments made thereon, and that there is now justly due and owing from defendant to plaintiff on said promissory note the sum of $207.50 and interest thereon at the rate of 10 % per annum from Feb. 4th, 1884, and defendant fails, neglects, and refuses to pay the same or any part thereof.

For a further and separate and fourth cause of action against defendant herein pl'ff alleges—

That on the 4th dau of February, 1884, defendant was doing business under the name and style of J. H. Foster & Co.

That on said 4th day of February, 1884, defendant, under said name and style of J. H. Foster & Co., for value received, made, executed, and delivered unto one Doynes Turner his certain
833 promissory note in words and figures as follows, to wit:

$124.12. ALBANY, *Feb.* 4, 1884.

Thirty days after date (without grace) we promise to pay to the order of D. Turner one hundred & twenty-four dollars, for value received, with interest at ten per cent. per annum from date until paid, both principal and interest payable only in United States gold coin.

No. —.

(Signed) J. H. FOSTER & CO.
R. A. F.

That afterwards, to wit, on the 28th day of January, 1886, said Doynes Turner, for value, duly sold, assigned, and endorsed said note

to this plaintiff, and that plaintiff is now the legal owner and holder thereof.

That said note has not been paid nor any payments made thereon; that there is now justly due and owing from defendant to plaintiff on said promissory note the sum of $124.00 and interest thereon at the rate of 10% per annum from the 4th day of February, 1884, and defendant fails, neglects, and refuses to pay the same or any part thereof.

For a further and separate and fifth cause of action against the above-named defendant plaintiff alleges—

That on the 4th day of December, A. D. 1882, defendant was doing business in Albany, Oregon, under the firm name and style of J. H. Foster & Co.

That on said 4th day of December, 1882, defendant, for value received, under said firm name and style of J. H. Foster & Co., made, executed, and delivered unto one Guseppe Mataese his certain promissory note in words and figures as follows, to wit:

"$400.00. ALBANY, OREGON, *De'b'r* 4, 1882.

One year after date, without grace, I promise to pay to the order of Juseppe Matasee, at Albany, Oreg., four hundred dollars in gold coin of the United States of America, with interest thereon in like
834 gold coin at the rate of eight per cent. per annum from date until paid, for value received, and in case suit or action is instituted to collect this note or any portion thereof I promise to pay such additional sum as the court may adjudge reasonable as attorney's fees in said suit or action.

No. —. Due ——.

(Signed) J. H. FOSTER & CO.

That afterwards, to wit, on the 28th day of January, 1886, said Guseppe Mataese, for value received, duly assigned, sold, and endorsed said promissory note to this plaintiff, and that plaintiff is now the owner and holder thereof.

That said note has not been paid nor any payments made thereon except the interest thereon to December 4th, 1883.

That the sum of $50.00 is a reasonable attorney's fee for instituting and prosecuting this action to collect said note as provided therein.

That there is now justly due and owing from defendant to plaintiff on said promissory note the sum of $400.00, with interest thereon at the rate of 8% per annum from Dec. 4th, 1883, and the further sum of $50.00 att'y's fees, and that defendant fails, neglects, and refuses to pay the same or any part thereof.

Wherefore plaintiff prays for judgment against defendant for the following sums, to wit:

1st. $210.00 and interest thereon at 10% per annum from Feb. 4th until paid.

2nd. $368.70 and interest at 10% per annum from Feb. 4th, 1884, until paid.

3rd. $207.50 and interest thereon at 10% per annum from Feb. 4th, 1884, until paid.

4th. $124.00 and interest thereon at 10% per annum from February 4th, 1884, until paid.

5th. $400.00, with interest thereon at the rate of 10% per
835 annum from December 4th, 1883, and the further sum of $50.00 att'y's fees and the costs and disbursements of this action, to be taxed.

WOLVERTON & IRVINE, AND
WEATHERFORD & BLACKBURN,
Att'ys for Pl'ffs.

STATE OF OREGON, } ss:
County of Linn, }

I, W. H. Goltra, being first duly sworn, say that I am the plaintiff above named, and that the foregoing complaint is true, as I verily believe.

W. H. GOLTRA.

Subscribed and sworn to before me this 29th day of Jan., 1886.
[L. S.] O. H. IRVINE,
Notary Public.

(Endorsed:) In the circuit court of the State of Oregon for Linn county. W. H. Goltra, pl'ff, *vs.* J. H. Foster & Co., def't. Complaint. Filed Jan. 30th, 1886. D. Andrews, clerk. Weatherford & Blackburn, Wolverton & Irvine, pl'ff's att'ys.

Summons.

In the Circuit Court of the State of Oregon for the County of Linn.

W. H. GOLTRA, Plaintiff,
vs.
J. H. FOSTER, Doing Business under the Name and Style of J. H. Foster & Co., Defendant. } Summons.

To J. H. Foster, the above-named defendant.

In the name of the State of Oregon.

You are hereby required to appear and answer the com-
836 plaint of the above plaintiff in the above-entitled court, now on file with the clerk of said court, within ten days from the date of the service of this summons upon you if served in Linn county, Oregon; but if served in any other county in the State of Oregon, then within twenty days from the date of the service of this summons upon you; and you are hereby notified that if you fail to appear and answer said complaint as hereby required the plaintiff will take judgment against you for the following sums, to wit:

1st, $210.00 and interest thereon at 10% per annum from Feb. 4th, 1884, until paid; 2nd, $368.70 and interest at 10% per annum from February 4th, 1884, until paid; 3rd, $207.50 and interest thereon at 10% per annum from February 4th, 1884, until paid

4th, $124.00 and interest thereon at 10% per annum from February 4th, 1884, until paid; 5th, $400.00 with interest thereon at the rate of 8% per annum from December 4th, 1883, until paid, and the further sum of $50.00 att'ys' fees and the costs and disbursements of action to be taxed.

WEATHERFORD AND BLACKBURN AND
WOLVERTON & IRVINE,
Attorneys for Plaintiff.

Rec'd Jan'y 30th, 1886.

J. K. CHARLTON,
Sheriff of Linn Co., Or.,
Per JAS. J. CHARLTON, *Deputy.*

STATE OF OREGON, } ss:
County of Linn, }

I hereby certify that I served the within summons in Linn county, Oregon, on the 6th day of February, 1886, on the therein-named defendant, J. H. Foster, by delivering to him in person a copy of said summons, prepared and certified to by me as sheriff, together with a copy of the complaint in the therein-entitled action, prepared and certified to by D. Andrews, county clerk.

J. K. CHARLTON,
Sheriff of Linn County, Oregon,
837 Per JAS. J. CHARLTON, *Deputy.*

(Endorsed:) Filed Feb. 8, 1886. D. Andrews, clerk, by F. M. Redfield, deputy.

Motion.

In the Circuit Court of the State of Oregon for the County of Linn.

W. H. GOLTRA, Plaintiff,
vs.
J. H. FOSTER, Doing Business under the Name and Style of J. H. Foster & Co., Defendant.

Comes now the plaintiff above named, by Weatherford and Blackburn and Wolverton & Irvine, his attorneys, and moves the court and hereby makes application for the entry of the default of the defendant herein and for judgment against defendant, as specified in the summons and complaint herein, for the reason that the above-entitled action is an action arising upon contracts for the recovery of money only, and no answer or other pleading has been filed with the clerk of the above-entitled court within the time specified in the summons herein, and that no other or further time has been granted by the court or judge thereof.

WEATHERFORD AND BLACKBURN AND
WOLVERTINE & IRVINE,
Attorneys for Plaintiff.

Journal Entry.

STATE OF OREGON, } ss:
County of Linn, }

Circuit Court of the State of Oregon for the County of Linn, in Vacation after the October Term, A. D. 1885, to wit, the 23rd Day of February, A. D. 1886.

838 W. H. GOLTRA, Plaintiff, }
vs.
J. H. FOSTER, Defendant. }

Now, at this day, comes the plaintiff above named, by Weatherford and Blackburn and Wolverton & Irvine, his attorneys, and files his written application with the clerk of the court for the entry of the default of the defendant herein and for judgment against defendant, as specified in the summons and complaint herein; and it appearing that the above-entitled action is an action arising upon contracts for the recovery of money only; that the defendant herein was duly and personally served with summons herein in Linn county, Oregon, on the 6th day of February, A. D. 1886, by the sheriff of said county, by said sheriff delivering to said defendant, J. H. Foster, in person a copy of the original summons herein, prepared and certified to by said sheriff, together with a copy of the complaint herein, prepared and certified to by D. Andrews, county clerk of Linn county, Oregon, and *ex officio* clerk of this court;

That said defendant has failed, neglected, and refused and still fails, neglects, and refuses to appear and answer or otherwise plead to the complaint herein;

That no answer or other pleading has been filed with the clerk of this court within the time specified in the summons, to wit, ten days, and that no other or further time has been granted by the court or judge thereof to which said defendant might appear and answer the complaint herein:

It is therefore ordered, adjudged, and considered that said defendant is in default, and the default of said defendant is now here entered against defendant; and now it appearing that there is justly due and owing from defendant to plaintiff on the first cause
839 of action set out in plaintiff's complaint the sum of $253.05, with accruing interest from this date at the rate of 10 % per annum, as specified in the summons herein, and that such cause of action arose upon a contract, to wit, the 1st promissory note set out in plaintiff's complaint;

And it further appearing that there is now justly due and owing from defendant to plaintiff on the second cause of action set out in plaintiff's complaint herein the sum of $444.28, with accruing interest from this date at the rate of 10 % per annum, as specified in the summons herein, and that such cause of action arose upon a contract, to wit, the second promissory note set out in plaintiff's complaint;

And it further appearing that there is now justly due and owing from defendant to plaintiff on the third cause of action set out in plaintiff's complaint the sum of $250.03 and accruing interest from this date at the rate of 10 % per annum, as specified in the summons herein, and that said third cause of action arose upon a contract, to wit, the third promissory note set out in plaintiff's complaint; and it further appearing that there is now justly due and owing from defendant to plaintiff on the fourth cause of action set out in plaintiff's complaint the sum of $149.41 and accruing interest from this date at the rate of 10 % per annum, as specified in the summons herein, and that said fourth cause of action arose upon a contract, to wit, the fourth promissory note set out in plaintiff's complaint; and it further appearing that there is now justly due and owing from defendant to plaintiff, on the fifth cause of action set out in plaintiff's complaint, the sum of $470.93, with accruing interest from the date hereof at the rate of 8 % per annum, and $50.00 att'y's fees, as specified in the summons herein, and that said fifth cause of action arose upon a contract, to wit, the fifth promissory note set out in plaintiff's complaint:

840 Now, therefore, by virtue of the law and the premises it is ordered, adjudged, and considered that plaintiff do have and recover of and from defendant the sum of $1,096.77, with interest thereon at the rate of 10 % per annum from the date hereof until paid, and the further sum of $470.93, with accruing interest thereon at the rate of 8 % per annum from the date hereof until paid; the further sum of $50.00 attorney's fees, and the costs and disbursements of this action, taxed at $19.30, and that execution issue to enforce this judgment.

D. ANDREWS,
County Clerk of Linn County and ex Officio Clerk of the Circuit Court of the County of Linn.

STATE OF OREGON, } ss:
County of Linn, }

I, J. P. Galbraith, county clerk of Linn county, State of Oregon, and *ex officio* clerk of the circuit court for the State of Oregon for said county of Linn, do hereby certify that the foregoing and attached copy of judgment-roll has been by me carefully compared with the original judgment-roll in the case of W. H. Goltra, pl'ff, *vs.* J. H. Foster & Co., def't, in said circuit court, to recover money now in my office and custody, and that it *it* is a true and correct copy of all and the whole of said original judgment-roll.

In testimony whereof I have hereunto set my hand and affixed the seal of this circuit court this 2nd day of April, 1887.

J. P. GALBRAITH,
County Clerk.

841 (Endorsed:) In the circuit court of the State of Oregon for Lynn county. Judgment-roll. W. H. Goltra, plaintiff, *vs.* J. H. Foster & Co., defendant. Judgment rendered for plaintiff at the vacation term of said court on the — day of ——, 188–.

64—186

Complaint filed Jan'y 30, 1886. Docket No. —. Case No. 453 D. Andrews, county clerk. Wolverton & Irvine, Weatherford Blackburn, att'y- for plaintiff. R. S. Strahan, att'y for defendant.

842 U. S. Court.

NEAL
vs.
FOSTER *et al.* } No. 1258.

COMPLAINANT'S EXHIBIT "T." G. H. Durham, Master.

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843 *Complaint.*

In the Circuit Court of the State of Oregon for Linn County.

E. WALDEN, Plaintiff,
vs.
J. H. FOSTER, Doing Business under the Firm Name of J. H. Foster & Co., Defendants.

The plaintiff above named complains of the above-named defendant and for cause of action alleges—

That on and prior to the 6th day of November, 1883, the above-named J. H. Foster was doing business in Albany, Oregon, under the firm name of J. H. Foster & Co.

That on the said 6th day of November, 1883, the above-named defendant, under the name of J. H. Foster & Co., for value, made, executed, and delivered to plaintiff his certain promissory note in words and figures following:

"$150.00. ALBANY, *Nov.* 6, 1883.

One day after date, without grace, we promise to pay to the order of E. Walden one hundred & fifty dollars for value received, with interest at ten per cent. per annum from date until paid, both principal and interest payable only in United States gold coin.

J. H. FOSTER & CO.
R. A. F."

That plaintiff is still the legal owner and holder of said notes.

That the whole amount thereof, to wit, the sum of $150.00 in U. S. gold coin, with interest thereon from Nov. 6th, 1883, at the rate of ten per cent. per annum, is now justly due and owing from de-
844 fendant to plaintiff, and defendant fails and refuses to pay the same or any part thereof.

And for a second and further and separate cause of action against defendant plaintiff alleges—

That on and prior to the 5th day of December, 1883, the above-

amed J. H. Foster was doing business in Albany, Oregon, under e firm name of J. H. Foster & Co.

That on said 5th day of December, 1883, the said defendant J. H. oster, under the name of J. H. Foster & Co., for value, made, exeuted, and delivered to plaintiff his certain promissory note in writng in words and figures following:

"$300.00. ALBANY, *Dec.* 5, 1883.

One day after date, without grace, we promise to pay to the order f E. Walden three hundred dollars, for value received, with interst at ten per cent. per annum from date until paid, both principal nd interest payable only in United States gold coin.

J. H. FOSTER & CO.,
R. A. F."

That plaintiff is still the owner and holder of said promissory ote.

That the whole amount thereof, to wit, the sum of $300.00, in U. S. gold coin, with interest thereon from Dec. 5, 1883, at the rate of ten per cent. per annum, is now justly due and owing from defendant to plaintiff, and defendant neglects and refuses to pay the same or any part thereof.

Wherefore plaintiff prays judgment against defendant for the sum of $150.00 in U. S. gold coin, with interest thereon from Nov. 6, 1883, at ten per cent. per annum until paid, the further sum of $300.00 in U. S. gold coin, with interest thereon from Dec. 5th, 1883, at ten per cent. per annum until paid, and for the costs and
845 disbursements of this action.

WEATHERFORD & BLACKBURN AND
WOLVERTON & IRVINE,
Att'ys for Pl'ff.

STATE OF OREGON, } ss:
County of Linn, }

I, Chas. E. Wolverton, being first duly sworn, say I am one of the attorneys for the plaintiff above named, and that I know the contents of the foregoing complaint, and the same is true, as I verily believe; that the reason I make this verification is that said cause of action are founded upon two instruments of writing for the direct payment of money only, and the same are now in my possession and plaintiff is not now in Linn county.

CHAS. E. WOLVERTON.

Subscribed and sworn to before me this 27th day of Jan'y, 1886.
[L. S.] D. R. N. BLACKBURN,
Notary Public.

(Endorsed:) In the circuit court in and for Linn county, Oregon. E. Walden, plaintiff, *vs.* J. H. Foster & Co., defendant-. Complaint filed Jan. 24th, 1886. D. Andrews, clerk, by F. M. Redfield, deputy. Weatherford & Blackburn and Wolverton & Irvine, att'ys for pl'ff.

846 *Summons.*

In the Circuit Court of the State of Oregon for the County of Linn.

E. WALDEN, Plaintiff,
vs.
J. H. FOSTER, Doing Business under the Firm Name of J. H. Foster & Co., Defendant. } Summons.

To J. H. Foster, the above-named defendant:

In the name of the State of Oregon.

You are hereby required to appear and answer the complaint of the above plaintiff in the above-entitled court, now on file with the clerk of said court, within ten days from the date of the service of this summons upon you if served in Linn county, Oregon, but if served in any other county in the State of Oregon, then within twenty days from the date of the service of this summons upon you; and you are hereby notified that if you fail to appear and answer said complaint as hereby required the plaintiff will take judgment against you for the sum of $150.00 in U. S. gold coin, with interest thereon in like coin at the rate of 10 per cent. per annum from Nov. 6th, 1883, until paid, the further sum of $300.00 in U. S. gold coin, with interest thereon in like coin at the rate of 10 per cent. per annum from Dec. 5th, 1883, until paid, and for the costs and disbursements of this action to be taxed.

WEATHERFORD & BLACKBURN &
WOLVERTON & IRVINE,
Attorneys for Plaintiff.

Rec'd Jan'y 27th, 1886.

J. K. CHARLTON,
Sheriff of Linn Co., Or.,
Per JAS. J. CHARLTON, *Deputy.*

847 STATE OF OREGON, } ss:
County of Linn, }

I hereby certify that I served the within summons in Linn county, Oregon, on the 1st day of February, 1886, by delivering a copy of said summons prepared and certified to by me as sheriff, together with a copy of the complaint in the therein-entitled action prepared and certified to by D. Andrews, county clerk, to J. H. Foster in person.

J. K. CHARLTON,
Sheriff of Linn Co., Oregon,
Per JAS. J. CHARLTON, *Deputy.*

(Endorsed:) Filed Feb. 2, 1886. D. Andrews, clerk, by Geo. I. Foster, deputy.

Motion.

In the Circuit Court of the State of Oregon for Linn County.

E. WALDEN, Plaintiff,
vs.
J. H. FOSTER, Doing Business under the Firm Name of J. H. Foster & Co., Defendant.

Comes now the plaintiff above named, by Weatherford & Blackburn and Wolverton & Irvine, his attorneys, and moves the court and hereby makes application for the entry of the default of the defendant herein and for judgment against the defendant as specified in the summons and complaint herein for the reason that
848 the above-entitled action is an action arising upon contracts for the recovery of money only, and no answer or other pleading has been filed with the clerk of the above-entitled court within the time specified in the summons herein, and that no other or further time has been granted by the court or judge thereof.

WEATHERFORD & BLACKBURN AND
WOLVERTON & IRVINE,
Attorneys for Plaintiff.

(Endorsed:) In the circuit court of the State of Oregon for the county of Linn. E. Walden, plaintiff, *vs.* J. H. Foster & Co., defendant. Notice and application for default & judg. Filed Feb. 23, 1886. D. Andrews, clerk, by F. M. Redfield, deputy. Weatherford & Blackburn and Wolverton & Irvine, att'ys for pl'ff.

Journal Entry.

STATE OF OREGON, } ss:
County of Linn, }

Circuit Court of the State of Oregon for the County of Linn in Vacation after the October Term, A. D. 1885, to wit, the 23rd day of February, A. D. 1886.

E. WALDEN, Plaintiff,
vs.
J. H. FOSTER & Co., Defendants.

Now, at this day, comes the plaintiff above named, by Weatherford & Blackburn and Wolverton & Irvine, his attorneys, and files
849 his written application with the clerk of this court for the entry of the default of the defendant herein and for judgment against the defendant as specified in the summons and complaint herein; and it appearing that the above-entitled action is an action arising upon contracts for the recovery of money only; that the defendant herein was duly and personally served with summons herein in Linn county, Oregon, on the 1st day of February, A. D. 1886, by the sheriff of said county, by said sheriff delivering to said defendant, J. H. Foster, in person a copy of the original summons herein

prepared and certified to by said sheriff, together with a copy of the complaint herein prepared and certified to by D. Andrews, county clerk of Linn county, Oregon, and *ex officio* clerk of this court;

That said defendant has failed, neglected, and refused and still fails, neglects, and refuses to appear and answer or otherwise plead to the complaint herein;

That no answer or other pleading has been filed with the clerk of this court within the time specified in the summons, to wit, ten days, and that no other or further time has been granted by this court or judge thereof in which said defendant might appear and answer the complaint herein—

It is therefore ordered, adjudged, and considered that said defendant is in default; and the default of said defendant is now here entered against defendant.

And now it appearing that there is justly due and owing from defendant to plaintiff on the first cause of action set out in plaintiff's complaint the sum of $184.50, with accruing interest from this date at the rate of 10 % per annum as specified in the summons herein, and that such cause of action arose upon a contract, to wit, the first promissory note set out in the plaintiff's complaint;

850 And it further appearing that there is now justly due and owing from defendant to plaintiff in the second cause of action set out in plaintiff's complaint herein the sum of $366.50, with accruing interest from this date until paid at the rate of 10% per annum as specified in the summons herein, and that said cause of action arose upon a contract, to wit, the second promissory note set out in plaintiff's complaint:

Now, therefore, by virtue of the law and the premises, it is ordered, adjudged, and considered that plaintiff do have and recover of and from defendant the sum of $551.00, with interest thereon at the rate of 10% *per cent.* per annum from the date hereof until paid, and the further sum of $17.30 in payment of the costs and disbursements of this action, and that execution issue to enforce this action.

D. ANDREWS,
County Clerk of Linn County, Oregon, and ex Officio Clerk of the Circuit Court of the State of Oregon for Linn County.

STATE OF OREGON, } *ss:*
County of Linn, }

I, J. P. Galbraith, county clerk of Linn county, State of Oregon, and *ex officio* clerk of the circuit court for the State of Oregon for said county of Linn, do hereby certify that the foregoing and attached copy of judgment-roll has been by me carefully compared with the original judgment-roll in the case of E. Walden, pl'ff, *vs.* J. H. Foster & Co., def't-, in said circuit court, to recover money, now in my office and custody, and that it is a true and correct copy of all and the whole of said original judgment-roll.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court this 1st day of April, 1887.

[Seal Circuit Court.]

J. P. GALBRAITH,
County Clerk.

851 (Endorsed:) In the circuit court of the State of Oregon for Linn county. Judgment-roll. E. Walden, plaintiff, *vs.* J. H. Foster & Co., defendant-. Judgment rendered for pl'ff at the vacation term of said court on the — day of ——, 188–. Docketed ——, 188–. Complaint filed Jan'y 27, 1886. Docket No. —, case No. 4553. D. Andrews, county clerk. Wolverton & Irvine, att'y-for plaintiff. R. S. Strahan, att'y for defendant.

852 U. S. Court.

NEAL
vs.
FOSTER *et al.* } No. 1258.

COMPLAINANT'S EXHIBIT "U." Geo. H. Durham, Master.

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853 *Complaint.*

In the Circuit Court of the State of Oregon for Linn County.

JOHN R. BALTIMORE, Plaintiff,
vs.
J. H. FOSTER, Doing Business in Albany, Oregon, under the Firm Name and Style of J. H. Foster & Co., Defendants.

The plantiff above named complains of the above-named defendant and for cause of action alleges—

That at all the times and dates hereinafter set forth and mentioned J. H. Foster was, ever since has been, and now is doing business under the firm name and style of J. H. Foster & Co.

That on or about the 12th day of December, 1881, at Albany, Oregon, the said J. H. Foster & Co., for value, made, executed, and delivered to this plaintiff a certain promissory note whereby defendant promised to pay to plaintiff, one day after the date thereof, the sum of $500.00, with interest at 10 % per annum, and a reasonable attorney's fee in case suit or action was instituted to collect the same or any portion thereof, of which said note the following is a true copy, to wit:

$500.00. ALBANY, O., *Dec. 12th*, 1881.

One day after date, without grace, I promise to pay to the order of John R. Baltimore, at Albany, O., five hundred dollars in gold coin of the United States of America, with interest thereon in like gold coin, at the rate of ten per cent. per annum, from date until paid, for value received; and in case suit or action is instituted to collect this note or any portion thereof, I promise to pay such addi-

tional sum as the court may adjudge reasonable as attorney's fees in said suit or action.

(Signed) J. H. FOSTER & CO.

That plaintiff is now the owner and holder of said promissory note.

854 That fifty dollars is a reasonable attorney's fee for the commencement of this action upon said note and the prosecution of the same.

That the whole amount of said note, to wit, the sum of $500.00, with interest thereon from Dec. 12, 1881, at the rate of ten per cent. per annum, together with $50.00 reasonable attorney's fee, is now justly due and owing from defendant to plaintiff, no part of which has been paid except the interest upon said $500.00 to Dec. 12th, 1883, and defendant neglects and refuses to pay the same and every part thereof.

That for a further and second and separate cause of action against the defendant plaintiff alleges—

That at all the times and dates hereinafter set forth and mentioned the defendant, J. H. Foster, was, ever since has been, and now is doing business under the firm name and style of J. H. Foster & Co.

That on the 22nd day of March, 1883, the said J. H. Foster & Co., for value, made, executed, and delivered to John R. Baltimore, pl'ff above named, a certain other promissory note whereby defendant promised to pay plaintiff ninety days after date thereof the sum of one thousand dollars, with interest at ten per cent. per annum, of which said note the following is a true copy, to wit:

$1,000.00. ALBANY, O., *March 22d*, 1883.

Ninety days after date (without grace) I promise to pay to the order of John R. Baltimore one thousand dollars for value received, with interest at ten per cent. per annum until paid, both principal and interest payable only in United States gold coin.

J. H. FOSTER & CO.

That plaintiff is now the lawful owner and holder of said note, and that the whole amount thereof, to wit, the sum of one thousand dollars, with interest thereon from March 22nd, 1883, at the rate of ten per cent. per annum, is now justly due and owing from the

855 said defendant to plaintiff, no part of which has been paid except the interest thereon to July 12th, 1883, and defendant neglects and refuses to pay the same or any part thereof.

Wherefore plaintiff prays judgment against defendant for the sum of five hundred dollars in U. S. gold coin, with interest thereon from December 12th, 1883, at the rate of ten per cent. per annum, the further sum of fifty dollars as a reasonable attorney's fee, and the further sum of one thousand dollars in U. S. gold coin, and interest thereon from July 12th, 1883, at the rate of ten per cent. per annum, and for his costs and disbursements of this action to be taxed.

C. E. WOLVERTON,
Att'y for Pl'ff.

STATE OF OREGON, } ss:
County of Linn, }

I, John R. Baltimore, being first duly sworn, say I am the plaintiff above named; that I know the contents of the foregoing complaint, and the same is true, as I verily believe.

J. R. BALTIMORE.

Subscribed and sworn to before me this 8th day of Feb'y, 1884.
[L. S.] C. E. WOLVERTON,
Notary Public.

(Endorsed:) In the circuit court of the State of Oregon for Linn county. John R. Baltimore, plaintiff, *vs.* J. H. Foster & Co., defendant. Complaint filed Feb. 8, 1884. C. H. Stewart, clerk. C. E. Wolverton, att'y for pl'ff.

856–866 *Aff't of J. R. Baltimore.*

In the Circuit Court of the State of Oregon for Linn County.

JOHN R. BALTIMORE, Plaintiff,
vs.
J. H. FOSTER, Doing Business in Albany, Oregon, under the Firm Name and Style of J. H. Foster & Co., Defendant.

STATE OF OREGON, } ss:
County of Linn, }

I, John R. Baltimore, being first duly sworn, say I am the plaintiff above named; that I have commenced and have a good cause of action now existing in the above-entitled court against the above-named defendant.

That said defendant is indebted to this plaintiff and affiant in the sum of $500.00, with interest thereon from Dec. 12th, 1883, at the rate of ten per cent. per annum, the further sum of $50.00 attorney's fees, and the further sum of one thousand dollars, with interest thereon at the rate of ten per cent. per annum from July 12th, 1883, over and above all legal set-offs or counter-claims upon two express contracts for the direct payment of money; that said contracts and each of them was made and is payable in the State of Oregon, and that the payment of the same or either has not been secured by any mortgage, lien, or pledge upon real or personal property.

That the sum for which the attachment is asked is an actual, *bona fide* existing debt, due and owing from the defendant to the plaintiff, and that the attachment is not sought and the action prosecuted to hinder or delay or defraud any creditors of the defendant.

JOHN R. BALTIMORE.

Subscribed and sworn to before me this 8th day of Feb'y, 1884.
[L. S.] C. E. WOLVERTON,
Notary Public.

867 (Endorsed:) In the circuit court of the State of Oregon for Linn county. John R. Baltimore, plaintiff, *vs.* J. H. Foster & Co., defendant. Affidavit. Filed Feb. 8, 1884. C. H. Stewart, clerk. C. E. Wolverton, att'y for pl'ff.

Undertaking.

In the Circuit Court of the State of Oregon for Linn County.

JOHN R. BALTIMORE, Plaintiff,
vs.
J. H. FOSTER, Doing Business in Albany, Oregon, under the Firm Name and Style of J. H. Foster & Co., Defendant.

Whereas plaintiff above named has commenced an action in the above-entitled court against the above-named defendant to recover the sum of $500.00 & interest thereon at 10% per annum from Dec. 12th, 1883; the further sum of $50.00, attorney's fee, & the further sum of $1,000.00 and interest thereon from July 12th, 1883, at the rate of 10% per annum; and whereas plaintiff has filed his affidavit for a writ of attachment to issue against the property of said defendant:

Now, therefore, we, John R. Baltimore, plaintiff, as principal, and J. H. Burkhart, as surety, do hereby undertake in the sum of eighteen hundred dollars and promise to the effect that plaintiff will pay all costs that may be adjudged to the defendant and all damages which he may sustain by reason of the attachment, if the same be wrongful or without sufficient cause, not exceeding the said sum of $1,800.00.

868 Dated at Albany, Feb'y 8th, 1884.

JOHN R. BALTIMORE. [ ]
J. H. BURKHART. [ ]

STATE OF OREGON, } ss.
County of Linn, }

I, J. H. Burkhart, being first duly sworn, say I am a resident and freeholder within Linn county, Oregon, and that I am worth the sum of $3,600.00 over and above all my just debts and liabilities and exclusive of property exempt from execution.

J. H. BURKHART.

Subscribed & sworn to before me this 8 day of Feb'y, 1884.

[L. S.] C. E. WOLVERTON,
Notary Public.

(Endorsed:) In the circuit court of the State of Oregon for Linn county. John R. Baltimore, plaintiff, *vs.* J. H. Foster & Co., defendant. Undertaking. Filed Feb. 8, 1884. C. H. Stewart, clerk. C. E. Wolverton, att'y for pl'ff.

Summons.

In the Circuit Court of the State of Oregon for the County of Linn.

JOHN R. BALTIMORE, Plaintiff,
vs.
J. H. FOSTER, Doing Business in Albany, Oregon, under the Firm Name & Style of J. H. Foster & Co., Defendant. } Summons.

869 To J. H. Foster, the above-named defendant.

In the name of the State of Oregon:

You are hereby required to appear and answer the complaint of the above plaintiff in the above-entitled court, now on file with the clerk of said court, within ten days from the date of the service of this summons upon you, if served in Linn county, Oregon, but if served in any other county in the State of Oregon, then within twenty days from the date of the service of this summons upon you; and you are hereby notified that if you fail to appear and answer said complaint, as hereby required, the plaintiff will take judgment against you for the sum of $500.00 and interest thereon from Dec. 12th, 1883, at the rate of ten per cent. per annum; the further sum of $50.00 attorney's fee, and the further sum of $1,000.00 and interest thereon from July 12th, 1883, at the rate of ten per cent. per annum, and for the costs and disbursements of this action.

C. E. WOLVERTON,
Attorneys for Plaintiff.

Rec'd Feb. 8th, 1884, at 2½ o'clock p. m.
GEO. HUMPHREY, *Sheriff.*

STATE OF OREGON, *County of Linn,* } ss:

I hereby certify that I served the within summons, within said county and State, on the 8th day of Feb., 1884, on the therein-named defendant, J. H. Foster, by delivering to him in person a copy thereof, prepared and certified to by me as sheriff, together with a copy of the complaint in the therein-entitled action, prepared and certified to by C. H. Stewart, clerk of said county.

GEO. HUMPHREY,
Sheriff of Linn Co., O'g'n.

Fees, $4.80.

(Endorsed:) Filed Feb. 18, 1884. C. H. Stewart, clerk.

870 *Order.*

In the Circuit Court of the State of Oregon for the County of Linn.

JOHN R. BALTIMORE
vs.
J. H. FOSTER.

A preceeding supplemental execution.

It is ordered that said J. H. Foster produce before the court the books of J. H. Foster & Co.

It is further ordered that James Elkins be appointed a referee, with authority in this case to take testimony of witnesses in this case and report the same to the court; and he is hereby authorized to summon witnesses before him and call for the books and papers of J. H. Foster & Co. and examine witnesses relative thereto, as well as to other matters touching the issues in this matter.

Done at chambers at Salem, Oregon, Feb. 24th, 1886.

R. P. BOISE, *Judge.*

Journal Entry.

Be it remembered that at a regular term of the circuit court of the State of Oregon for the county of Linn, begun and held at the court-house, in the city of Albany, in said county, on Monday, the 10th day of March, A. D. 1884, the same being the regular time fixed by law for the holding of a regular term of said court, when were present the following officers thereof: The Hon. R. P. Boise, judge, presiding; the Hon. W. H. Holmes, district attorney;
871 C. H. Stewart, clerk; Geo. Humphrey, sheriff—when on Monday, March 10th, A. D. 1884, or the first judicial day of said term, the following, among other, proceedings were had, to wit:

JOHN R. BALTIMORE, Plaintiff,
vs.
J. H. FOSTER, Doing Business under the Firm Name & Style of J. H. Foster & Co., Defendants.

Now, at this day, this cause came on to be heard, the plaintiff appearing by C. E. Wolverton, his attorney; and it appearing to the court that the defendant herein was duly and personally served with summons herein in Linn county, Oregon, on the 8th day of February, 1884, by the sheriff of said county, as appears from the return of said sheriff endorsed on the summons herein, and that more than ten days have elapsed since the date of said service, and that said defendant has failed, neglected, and refused and still fails, neglects, and refuses to appear and answer and otherwise plead to the complaint of the plaintiff herein, and though being now three several times solemnly called in open court came not, but made default herein—

Whereupon counsel for plaintiff now moves the court for judgment against said defendant by default and for want of an answer,

which motion is sustained by the court, and it is ordered, adjudged, and decreed by the court that the defendant herein is in default, and the default of said defendant is now here entered of record.

And it appearing to the court that there is now due and owing from the defendant to the plaintiff the sum of $512.22 & the further sum of $1,066.25 and the further sum of $50.00, attorney's fees, on the two several promissory notes set forth in plaintiff's complaint herein—

It is therefore ordered, adjudged, and decreed by the court that plaintiff do have and recover of and from the defendant the
872 sum of $512.22, with accruing interest at the rate of ten per cent. per annum, and the further sum of $1,066.25, with accruing interest at the rate of ten per cent. per annum, and the further sum of $50.00, attorney's fees, and the costs and disbursements of this action, taxed at $24.45, and that proper execution may issue to enforce this decree.

R. P. BOISE, *Judge.*

STATE OF OREGON, } ss:
County of Linn, }

I, J. P. Galbraith, county clerk of Linn county, State of Oregon, and *ex officio* clerk of the circuit court for the State of Oregon for said county of Linn, do hereby certify that the foregoing and attached copy of judgment-roll has been by me carefully compared with the original judgment-roll in the case of John R. Baltimore, pl'ff, *vs.* J. H. Foster & Co., def't, in said circuit court, to recover money, now in my office and custody, and that it is a true and correct copy of all and the whole of said original judgment-roll.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court this 2nd day of April, 1887.

[Seal of Circuit Court.]

J. P. GALBRAITH,
County Clerk.

(Endorsed:) In the circuit court of the State of Oregon for Linn county. Judgment-roll. John R. Baltimore, plaintiff, *vs.* J. H. Foster & Co., defendant. Judgment rendered for — at the — term of said court, on the — day of ——, 188–. Docketed —— —, 188–. Complaint filed Feb'y 8, 1884. Docket No. —. Case No. 4263. C. H. Stewart, county clerk. C. E. Wolverton, att'y for plaintiff.

873 *Excerpts from Crawford's Water Books, Referred to by Witness L. E. Gray, Offered by Complainant. Geo. H. Durham, Master.*

J. H. Foster. 38

1884.		Page.	$ cts.
Sept. 29.	By Wm. Peebler	13	
	To ½ bbl. flour		2 00
Oct. 8.	To Graham		50
	" C. feed		75
	By Anderson, T. J.	26	8 00
16.	Robert Brown		4 00
Nov. 13.	To *by* Carter Leg	6	6 00
24.	To bran, 1,045 lbs	53	5 23
Dec. 2.	To Robert Brown, flour	59	4 00
	To cash from Briggs	78	1 25
	To cash	101	200 00
Feb. 28.	To cash, Pugh	113	400 00
Mar. 23.	" ¼ flour	46	1 00
27.	" cash, Pugh	48	136 00
31.	To bran	51	5 15
July 15.	" 1,015 lbs. bran	98	5 07
27.	" freight on sa[illegible]	109	30
Sept 7.	" ½ bbl. flour	150	1 10
Oct. 12.	" 300 lbs. bran	140	1 50
Nov. 11.	" 120 lbs. screenings	161	90
" 17.	" 130 " bran	165	70
Dec. 4.	" 640 " "	184	3 52
" "	" 230 " screenings	"	2 07
" "	" ½ bbl. flour	"	2 20
" "	" ¼ gran. flour	"	1 10
Feb. 3.	" 130 screenings		1 15
" 13.	" 1 bbl. flour		4 20
			797 69

Oct. 10.	Carried to page	47	2 00
1885.			
Apr. 6.	By wheat	51	5 29
May 30.	By cash, Huston		3 80
	By notes & acc't paid by J. A. C.		760 00
	Carried to page	161	26 60
	Carried to page 161.		
			797 69

DISTRICT OF OREGON, *ss:*

I, Geo. H. Durham, master, hereby certify that the foregoing is a true copy of all the entries in the account of J. H. Foster on page 38 of the book called the "Old Ledger" by the witness L. E. Gray and referred to in his testimony.

March 12, 1887.

GEO. H. DURHAM, *Master.*

874 J. H. Foster.

1886.			
M'ch 12.	To screenings	1	10
Apr. 5.	" ½ b. flour	2	20
May 12.	" 985 bran	5	90
June 17.	" 1 bbl. flour	4	40
	Bro't forward	26	60
		40	20

	Carried forward	40	20
		40	20

DISTRICT OF OREGON, *ss:*

I, Geo. H. Durham, master, do hereby certify that the foregoing is a true copy of all the entries on page 161 of the book called the "Old Ledger" by the witness L. E. Gray and referred to by him in his testimony.

GEO. H. DURHAM, *Master.*

875 J. H. Foster. 13

1885.							1885.		
May	1.	To cash	165			Sept.	1.	By 1 month work	75 00
June	1.	" "	174			Oct.	1.	" 1 " "	75 00
Sept.	1.	" "	239	38	00	Nov.	1.	" 1 " "	75 00
Oct.	1.	" "	235	40	00	Dec.	1.	" 1 " "	75 00
	3.	" "	235	30	00	1886.			
	10.	" "	235	14	50	Jan.	1.	" 1 " "	75 00
Nov.	3.	" "	235	65	10	Feb.	1.	" 1 " "	75 00
Dec.	1.	" "	227	75	00	March	1.	" 1 " "	75 00
1886.						Apr.	1.	" 1 " "	75 00
Jan.	2.	To cash	227	75	00	May	1.	" 1 " "	75 00
Feb.	5.	" "	198	70	00	June	1.	" 1 " "	75 00
	6.	" "	198	5	00	July	1.	" 1 " "	75 00
	8.	" "	198	5	00	Aug.	1.	" 1 " "	75 00
March	6.	" "	198	65	00	Sept.	1.	" 1 " "	75 00
April	2.	" "	204	75	00	Oct.	1.	" 1 " "	75 00
May	1.	" "	165	80	00				
June	1.	" "	174	75	00				
July	1.	" "	180	75	00				
Aug.	3.	" "	185	75	00				
Sept.	2.	" "	1	50	00				
Oct.	1.	" "		40	00				
	12.	" "		10	00				
		Carried to mill book.		87	40				
				1,050	00				1,050 00

DISTRICT OF OREGON, *ss:*

I, Geo. H. Durham, master, hereby certify that the foregoing is a true copy of the entries and of the whole thereof on page 13 of the book called the Water Book by the witness L. E. Gray and referred to in his testimony.

March 12, 1887.

GEO. H. DURHAM, *Master.*

876 J. H. Foster.

1886.						1886.			
		Bro't forward		40	20	Nov.	1.	Bro't forward	87 40
Aug.	10.	To ½ bbl. flour	308	1	10		1.	By 1 month work	75 00
	16.	" 1 " "	310	4	40	Dec.	3.	" " " "	374 75 00
Oct.	14.	" feed	342	10	53	1887.			
	23.	" 1 bbl. flour	350	4	40	Jan.	3.	" " " "	388 75 00
Nov.	2.	" cash	355	60	00	Feb.	1.	" " " "	75 00
		" 100 lbs. C. feed.	355 4	1	00				
Dec.	3.	" cash	373	60	00				
	4.	" flour	375	1	50				
	14.	" screenings	380		75				
	25.	" cash	384	20	00				
1887.									
Jan.	3.	" "	388	60	00				
	15.	" 1 bbl. flour	394	4	00				
Feb.	7.	" cash	402	52	00				
	26.	" feed	409	6	69				

DISTRICT OF OREGON, *ss*:

I, Geo. H. Durham, master, hereby certify that the foregoing is a true copy of all the entries on page 38 of the book called the "New Ledger" by the witness L. E. Gray and referred to by him in his testimony.

March 2, 1887.

GEO. H. DURHAM, *Master*.

877 NEAL *vs.* FOSTER *et al.*

DEF'T CRAWFORD'S EXHIBIT No. 1. Geo. H. Durham, Master.

Nov. 10, 1886.

$5,000.00. ALBANY, OREGON, 18 *Sept.*, 1883.

Ninety days after date, without grace, I promise to pay to the order of J. H. Foster & Co., at the banking-house of John Conner, five thousand dollars, for value received, with interest after maturity at the rate of ten-twelfths of one per cent. per month until paid, principal and interest payable in United States gold coin, and, in case suit is instituted to collect this note or any portion thereof, I promise to pay such additional sum as the court may adjudge reasonable as attorney's fees in said suit.

No. 322. A. PEARCE.

Due Dec'b. 17, '83.
Feb'y 15, '84.

(Endorsements on back of note:)
P'd Dec'b. 17, '83, 83.34 doll., int. to Feb'y 15, '84. J. H. Foster & Co.

878 NEAL *vs.* FOSTER *et al.*

DEF'T'S EXHIBIT No. 2. Geo. H. Durham, Master.

J. H. Foster & Co. "General ac."

Messr. J. H. Foster & Co. in ac. with Sibson, Church & Co.

1884.			*Days.*	*Interest.*
Jan'y 24.	To balance as per ac. rend. them	6,060 61	440	740 75
Feb'y 16.	" "Afton" ac., balance bro't forward	3,140 45		
	" expenses sending margin ac. ren'd	145 50	270	259 60
	" fire insurance in Portland, su'y in full this charge	215 00		
1885.				
April 15.	" interest (balance this ac.)	951 60		
		$10,477 16		$1,000 35

Cr.

1884.					
Febr'y 9.	By Everding & Farrell (cash)	413 14	425		48 75
1885.					
April 15.	Balance interest carried up				951 60
15.	Balance due S., C. & Co. carried down	10,064 02			
		$10,477 16			$1,000 35
	To balance bro't down	10,064 02			

(Cash April 15, '85.)

Portland, April 15, 1885.

SIBSON, CHURCH & CO.
P'd.

Total amount due:

Balance as per above	10,064 02	
" "C. Madrid ac."	1,113 00	
" "Janet McNeil ac."	1,857 93	
	13,034 96	cash April 15, 1885.

S., C. & CO.
P'd.

879 DEF'T'S EX. 3. Geo. H. Durham, Master.

PORTLAND, OREGON, *Aug. 15th*, 1885.

Messrs. J. H. Foster & Co., Albany, Or.

GENT'N: In accordance with our last respects we have for some time been anticipating a visit from your senior, but have been therein disappointed.

We now beg to enclose final statements of ac's, covering ac. sales of flour p. "City of Madrid" and "Janet McNeil" & account current, showing balances as below, viz:

General ac.	10,064 02	
"C. Madrid" ac.	1,113 01	
"Janet McNeil" ac.	1,857 93	
Total	13,034 96	cash Ap'l 15, '85.

We trust the above will all be found correct. Please notify us of receipt & oblige,

Yours truly,

SIBSON, QUACKENBUSH & CO.

880 DEF'T'S EX. No. 4. G. H. D., Master.

Account sales of 10,000 bags "Magnolia Mills" flour, ex "City of Madrid," sold for account Messr. J. H. Foster & Co., Albany, Or., by Mr. William Scott, Liverpool, England.

1884.								s.	d.			
May	14.	By	250	bags,	weigh'g	$89^{\frac{50}{280}}$	sacks, @	31	–	138	7	10
	15.	"	10	"	"	3^{163}	"	30	3	5	8	4
	20.	"	500	"	"	178^{150}	"	30	3	270	"	8
	21.	"	7,900	"	"	$2{,}826^{268}$	"	29	$7\frac{1}{2}$	4,187	8	7
June	24.	"	50	"	"	17^{242}	"	29	9	26	11	6
July	3.	"	50	"	"	17^{258}	"	30	6	27	6	7
	4.	"	100	"	"	35^{170}	"	29	6	52	11	4
	5.	"	50	"	"	17^{240}	"	30	–	26	15	9
	7.	"	40	"	"	14^{80}	"	30	6	21	15	8
	8.	"	100	"	"	35^{247}	"	30	–	53	16	5
	10.	"	200	"	"	71^{246}	"	29	6	106	"	5
	11.	"	75	"	"	26^{245}	"	30	–	40	6	3
Aug.	10.	"	50	"	"	17^{243}	"	29	6	26	7	1
	10.	"	73	"	"	25^{254}	"	29	3	37	17	9
	13.	"	45	"	"	16^{20}	"	29	–	23	6	1
	15.	"	50	"	"	17^{240}	"	29	6	26	6	9
	15.	"	25	"	"	8^{260}	"	29	6	13	3	5
	18.	"	20	"	"	7^{40}	"	29	6	10	10	9
	18.	"	64	"	"	22^{240}	"	29	–	33	2	10
			9,652	carried forward						£5,127	"	2

881 Account sales of 10,000 bags "Magnolia Mills" flour, ex "City of Madrid," sold for account Messr. J. H. Foster & Co., Albany, Or., by Mr. William Scott, Liverpool, Eng'd.

1884.												
Aug.	18.	By 9,552 bags bro't forward								5,127	"	2
								s.	d.			
	19.	"	50	"	weigh'g	$17^{\frac{240}{280}}$	sacks, @	29	3	26	2	4
	20.	"	108	"	"	38^{214}	"	29	3	56	13	10
	21.	"	35	"	"	12^{101}	"	29	6	18	4	8
	22.	"	20	"	"	7^{40}	"	29	6	10	10	9
Sept.	3.	"	75	"	"	25^{278}	"	28	9	37	7	4
	18.	"	60	"	"	21^{128}	dam'd	25	3	27	1	10
											5,303	4 9

Charges.

	T.	H.	"	"					
Freight on	447	1	3	20	@ 40 | per ton		894	3	10
Dock & town dues and entry							44	16	6
M. porterage, land'g, hous'g, select'g, restoreing rejections							55	17	6
Quay rent, 2 0 10; fire ins'ce, 8 2 0; w'house rent, 18 15 3							28	18	1
Porterage, reweighing, & delivering							33	10	6
Free on board, carting, sampling, examining							4	15	7
Carriage of samples, 16s.; stamping mar. policy, 13 | 6							1	9	6
Allowance on sale 100 bags August 20th							1	16	"
Freight on 250 bags to Belfast and dues							4	12	6
Interest on freight and charges, £1,070, for 126 days							18	9	4
Commission & guarantee, 3% on £5,303 4 | 9							159	1	11
									1,247 11 3
Nett proceeds cash 17 Sept., 1884									£4,055 13 6

E. & O. E.

882 Mess. J. H. Foster & Co. in ac. with Sibson, Church & Co.

10,000 bags "Magnolia Mills" flour, per "City of Madrid" ac.

Dr.

1883.					
December	20.	To our advances against this shipment: cash dep't'd B. B. Col. to cr. their ac.		16,000	
"	"	" transf'd to cr. their general ac.		4,000	
1884.					
March	10.	" interest on $20,000 to Sept'r 17, @ 5%, 187 ds.		519 45	
1885.					
April	15.	" interest on $1,052.21 Sept. 17th to date, @ 10%, 208 ds.		60 80	
					$20,580 00

Cr.

1884.				
Sept'r	17.	By N. P. ac. sales herewith, £4,055 13 | 6 @ 50*d.* ex.	19,467 24	
1885.				
April	15.	Balance due Sibson, Church & Co.	1,113 01	
				$20,580 25

E. & O. E.

Portland, April 15th, 1885.

SIBSON, CHURCH & CO.

P'd.

To balance brought down (cash April 15, '85) $1,113 01

(Endorsed:) J. H. Foster & Co. "C. Madrid ac."

883 Def't's Ex. No. 5. Geo. H. Durham, Master.

Account sales of 10,000 bags "Magnolia Mills" flour, ex "Janet McNeil," sold for ac. Messrs. J. H. Foster & Co. *et al.* by Mr. Wm. Scott, Liverpool, Eng'd.

1884.

								s.	d.			
July	12.	By	600	bags,	weigh'g	212$\frac{19}{112}$	lb sacks, @	29	6	--	314	2 5
	21.	"	50	"	"	17^{280}	"	30	6	--	27	6 9
	22.	"	100	"	"	35^{140}	"	30	-	--	53	5 "
	23.	"	100	"	"	35^{63}	"	27	-	--	47	11 1
	24.	"	140	"	"	49^{280}	"	30	-	--	74	15 9
	"	"	10	"	"	3^{170}	"	30	-	--	5	8 3
	"	"	300	"	"	107^{130}	"	26	6	--	142	8 8
	25.	"	1,100	"	"	393^{128}	"	26	6	--	521	7 7
	"	"	300	"	"	107^{120}	"	26	6	--	142	8 8
Aug.	15.	"	50	"	"	17^{240}	"	30	3	--	27	" 2
	16.	"	10	"	"	3^{160}	"	30	-	--	5	7 2
	"	"	200	"	"	71^{120}	"	30	-	--	107	2 10
	"	"	30	"	"	10^{205}	"	30	3	--	16	4 7
	"	"	30	"	"	10^{210}	"	20	3	--	16	5 2
	18.	"	100	"	"	35^{200}	"	30	-	--	53	11 7
	22.	"	100	"	"	35^{200}	"	30	-	--	53	11 7
	"	"	50	"	"	17^{240}	"	30	-	--	26	15 7
	23.	"	100	"	"	35^{200}	"	30	-	--	53	11 7
	24.	"	250	"	"	88^{200}	"	29	6	--	121	3 5
	26.	"	400	"	"	142^{240}	"	29	9	--	212	10 "
	28.	"	50	"	"	17^{240}	"	30	3	--	27	" 2
			4,070 bags forward								£2,058	18 "

884 Account sales 10,000 bags "Magnolia Mills" flour, ex "Janet McNeil," sold for account Messrs. J. H. Foster & Co. *et al.* by Mr. Wm. Scott, Liverpool, Eng'd.

								s.	d.			
		4,070.									2,058	18 "
July	28.	By	25	bags,	weighing	$8^{2}{}^{8}{}^{8}_{1}{}^{0}$	lb sacks, @	29	9	--	13	6 6
	29.	"	500	"	"	178^{160}	"	29	6	--	263	7 10
	"	"	50	"	"	17^{240}	"	29	9	--	26	11 3
	"	"	560	"	"	200^{00}	"	29	3	--	292	10 "
	31.	"	500	"	"	178^{160}	"	29	9	--	265	12 7
	"	"	20	"	"	7^{40}	"	30	3	--	10	16 1
	"	"	100	"	"	35^{200}	"	29	6	--	52	18 7
Aug.	1.	"	64	"	"	22^{240}	"	29	9	--	34	" "
	2.	"	28	"	"	10^{00}	"	29	9	--	14	17 6
	4.	"	10	"	"	3^{160}	"	29	9	--	5	6 3
	1.	"	300	"	"	107^{53}	"	30	-	--	160	15 8
	"	"	100	"	"	25^{217}	"	30	6	--	54	11 2
	5.	"	187	"	"	66^{220}	"	29	9	--	99	6 10
	7.	"	156	"	"	55^{200}	"	29	6	--	82	2 7
	11.	"	162	"	"	57^{240}	"	29	3	--	84	12 4
	"	"	100	"	"	35^{210}	"	30	6	--	54	10 6
	"	"	100	"	"	35^{189}	"	30	6	--	54	9 3
	13.	"	50	"	"	17^{240}	"	29	9	--	26	11 3
	"	"	795	"	"	283^{260}	"	29	-	--	411	13 10
	16.	"	100	"	"	35^{220}	"	30	-	--	53	13 7
	20.	"	500	"dam'd	"	178^{160}	"	27	-	--	241	1 5
			8,477		carried forward						£4,361	9 "

885 Account sales of 10,000 bags "Magnolia Mills" flour, ex "Janet McNeil," sold for ac. Messrs. J. H. Foster & Co. *et al.* by Mr. Wm. Scott, Liverpool, Eng'd.

1884.

								s.	d.			
Aug.	20.	By	8,477	bags	bro't forward						4,361	9 "
	21.	"	50	"	weigh'g	17^{240}_{240}	lb sacks, @	29	6	--	26	11 3
	"	"	70	"	"	25^{00}	"	29	3	--	36	11 3
	"	"	100	"	"	35^{211}	"	30	-	--	53	12 8
	23.	"	100	"	"	35^{200}	"	30	6	--	54	9 4
	"	"	100	"	"	35^{200}	"	29	9	--	53	2 6
	26.	"	50	"	"	17^{240}	"	29	6	--	26	6 9
	27.	"	94	"	"	33^{145}	"	29	3	--	49	" 3
	"	"	100	"	"	35^{00}	"	30	6	--	53	7 6
	28.	"	100	"	"	35^{190}	"	29	3	--	52	3 7
	"	"	250	"	"	89^{80}	"	29	-	--	129	9 3
	30.	"	20	"	"	7^{40}	"	30	-	--	10	14 3
	"	"	12	"	"	4^{80}	"	29	-	--	6	4 3
Sept.	2.	"	25	"	"	8^{260}	"	29	3	--	16	1 2
	3.	"	74	"	"	26^{116}	"	28	9	--	37	19 5
	9.	"	100	"	"	35^{160}	"	30	6	--	54	4 11
	10.	"	24	"	"	8^{160}	"	29	3	--	12	10 9
	11.	"	100	"	"	35^{140}	"	30	6	--	54	2 9
	26.	"	22	"	"	7^{240}	"	29	-	--	11	7 10
Oct'r	5.	"	40	"	"	14^{80}	"	29	-	--	20	14 3
Dec'r	4.	"	42	"	"	11^{80}	"	27	-	--	15	4 9
			9,950	bags	forward						£5,132	7 8

886 Account sales of 10,000 bags "Magnolia Mills" flour, ex "Janet McNeil," sold for ac. Messrs. J. H. Foster & Co. *et al.* by Mr. Wm. Scott, Liverpool, Eng'd.

1884.

Dec'r	4.	By	9,950	bags	forward					5,132	7 8
		"	40	"	loose collected, weigh'g		cwt.	qr.	lb.		
							35	1	24	11	12 4
		"	10	"	claimed on ship and for loss in value loose collected					9	" "
			10,000	bags						5,153	" "

Charges.

	T.	H.	"	"	
Freight on	447	9	1	24 @ 42 | 6 pr. ton	950 18 7
Dock and town dues and entry					45 " "
M. porterage, superintending, land'g, hous'g, selecting, &c.					51 13 11
Watching, £8; extra labor restowing, £6 15 9					14 15 9
Quay rent, £22 16; w'house rent, 10 | 10; fire ins'ce, £15 17 6					38 9 10
Cleaning flour and making loose bags full, &c.					2 10 3
Carting, stow'g, weigh'g, deliv'g, 15 | 6; auction expenses, 30*s.*					2 5 6
Stamping policy, 10*s.* 3; carriage of samples, 12 | 6					1 2 9
Stow'g, carting on quantity dressed, ch'd for dressing, & rent					37 16 9
Allowance for short weight and 7 bags sour					1 15 6
F. o. b. cartage, £4 13 6; marine ins'ce, £2 2 3, on lots to Belfast					6 15 9
W'house rent, £1 6 8, and fire ins'ce 7*s.* 6 on ditto					1 14 2
Interest on freight and charges					20 11 5
Commission on £5,153 @ 3%					154 11 10
Freight and dues on 514 bags to Belfast					9 8 4
					1,339 10 4
Nett proceeds cash 6th Dec., '84					£3,813 9 8

E. & O. E.

887 Account sales 10,000 bags "Magnolia Mills" flour, ex "Janet McNeil," sold for ac. Messrs. J. H. Foster & Co. *et al.* by Mr. Wm. Scott, Liverpool, Eng'd.

1884.			
Dec. 6.	By amount bro't forward		£3,813 9 8
	@ 50*d.* exchange		$18,304 72

"Janet McNeil Ac."

1884.			
Feb. 11.	To cash p'd Bank Br. Col. for their ac.	18,500	
" "	marine ins'ce on £4,680 @ 27, less 5 and 10%, £80 0 7 @ 49|*d.* ex.	390	
" "	paid B. B. Col. ac. they paid O. & C. R. R. Co., wharfage, &c., &c.	650	
Dec'r 6.	" interest on advances (90 ds. free), 205 d., 5%	557 90	
1885.			
April 15.	" interest on balance due S., C. & Co., Dec. 6 to April 15th, 130 ds., @ 10%, $1,793.18	64 75	
			20,162 65
	Balance this ac. due S., C. & Co. April 15, '85		$1,857 93

E. & O. E.

Portland, April 15, 1885.

SIBSON, CHURCH & CO.
P'd.

To balance bro't down, $1,857.93 (cash April 15, 1885).

(Endorsed:) J. H. Foster & Co. Janet McNeil ac.

888 DEF'TS' EXHIBIT No. 6. Geo. H. Durham, Master.

$2,000.00. ALBANY, OREG., *July* 20, 1883.

One year after date (without grace) I promise to pay to the order of William Crawford two thousand dollars, for value received, with interest at eight per cent. per annum from date until paid, both principal and interest payable only in United States gold coin.

No. 34. J. H. FOSTER & CO.

$2,000.00. ALBANY, OREG., *July 20th*, 1883.

Two years after date (without grace) I promise to pay to the order of William Crawford two thousand dollars, for value received, with interest at eight per cent. per annum from date until paid, both principal and interest payable only in United States gold coin.

No. 35. J. H. FOSTER & CO.

$2,000.00. ALBANY, OREG., *July 20th*, 1883.

Three years after date (without grace) I promise to pay to the order of William Crawford two thousand dollars, for value received, with interest at eight per cent. per annum from date until paid, both principal and interest payable only in United States gold coin.

No. 36. J. H. FOSTER & CO.

889 $2,000.00. ALBANY, OREG., *July* 20, 1883.

Four years after date (without grace) I promise to pay to the order of William Crawford two thousand dollars, for value received, with interest at eight per cent. per annum from date until paid, both principal and interest payable only in United States gold coin.

No. 37. J. H. FOSTER & CO.

$2,000.00. ALBANY, OREG., *July* 20, 1883.

Five years after date (without grace) I promise to pay to the order of William Crawford two thousand dollars, for value received, with interest at eight per cent. per annum from date until paid, both principal and interest payable only in United States gold coin.

No. 38. J. H. FOSTER & CO.

$6,000.00. ALBANY, OREG., *July* 20, 1883.

One year after date (without grace) I promise to pay to the order of William Crawford six thousand dollars, for value received, without interest from — until paid, both principal and — payable only in United States gold coin.

No. 39. J. H. FOSTER & CO.

890 The within 5 notes constitute Defendants' Exhibit No. 7.
GEO. H. DURHAM, *Master*.

$2,000.00. ALBANY, OREGON, *July 20th*, 1867.

Three years after date we or either of us promise to pay William

Crawford or order the sum of two thousand dollars in U. S. gold coin, with ten per cent. interest from date, the interest on the whole amount to be paid annually in coin, value received.

J. H. FOSTER.
JOHN FOSTER.

[On margin:] This note is secured by mortgage, which is duly stamped for the note.

(Endorsements on back of foregoing note:)

Rec'd on the within note four hundred dollars, interest up to date, July 20th, 1869.

W. CRAWFORD,
Per J. A. C.

Received on the within note twelve hundred dollars, interest to date, July 20th, 1875.

J. A. C.

Rec'd, April 15th, 1881, four hundred dollars, interest on the within note, $400.00.

$2,000.00. ALBANY, OREGON, *July 20th*, 1867.

Five years after date we or either of us promise to pay William Crawford or order the sum of two thousand dollars in U. S. gold coin, with ten per cent. interest per annum from date, the interest to be paid on the whole amount at the end of every year in coin, value received.

J. H. FOSTER.
JOHN FOSTER.

[On margin:] This note is secured by mortgage, which is duly stamped for the note.

(Endorsements on back of foregoing note:)

Rec'd on the within note four hundred dollar-, interest to date, July 20th, 1869.

W. CRAWFORD.

Received on the within note twelve hundred dollars, interest
891 to date, July 20th, 1875.

J. A. C.

Rec'd, April 15th, 1881, four hundred dollars on the within note, $400.00.

$2,000.00. ALBANY, OREGON, *July 20th*, 1867.

Four years after date, for value received, we or either of us promise to pay William Crawford or order the sum of two thousand dollars in U. S. gold coin, with interest at ten per cent. per annum in coin, to be paid on the whole amount at the end of each year.

J. H. FOSTER.
JOHN FOSTER.

[On margin :] This note is secured by mortgage, which is duly stamped for the note.

(Endorsements on back of foregoing note :)

Rec'd on the within note four hundred dollars, interest to date, July 20th, 1869.

W. CRAWFORD,
Per J. A. C.

Rec'd on the within note twelve hundred dollars, interest to date, July 20th, 1875.

J. A. C.

Received, April 15, 1881, four hundred dollars, interest on the within note.

$2,000.00. ALBANY, OREGON, *July 20th*, 1867.

One year after date we or either of us promise to pay William Crawford or order the sum of two thousand dollars in U. S. gold coin, with interest thereon at ten per cent. in U. S. gold coin from date until paid, value received.

J. H. FOSTER.
JOHN FOSTER.

[On margin :] This note is secured by mortgage, & the stamp belonging to the note is on the mortgage.

(Endorsements on back of foregoing note:)

Received four hundred dollars, interest on the within note to date, July 20th, 1869.

W. CRAWFORD,
Per J. A. C.

Received twelve hundred dollars interest, on the within note to date, July 20th, 1875.

J. A. C.

Rec'd, April 15th, 1881, four hundred dollars, interest on the within note.

892 $2,000.00. ALBANY, OREGON, *July 20th*, 1867.

Two years after date we or either of us promise to pay William Crawford or order the sum of two thousand dollars in U. S. gold coin, with ten per cent. interest in coin per annum, the interest to be paid annually on the whole amount, value received.

J. H. FOSTER.
JOHN FOSTER.

[On margin :] This note is secured by a mortgage duly stamped instead of the note.

(Endorsements on back of foregoing note:)

Rec'd on the within note four hundred dollars, interest to date, July 20th, 1869.

W. CRAWFORD,
Per J. A. C.

Received twelve hundred dollars, interest on the within note to date, July 20th, 1875.

J. A. C.

Rec'd, April 15th, 1881, four hundred and seventy-eight $\frac{75}{100}$ — ($478.75).

893 DEFENDANTS' EXHIBIT No. 8. Geo. H. Durham, Master.

Due 1 April.

$5,000. PORTLAND, OREGON, 2*nd Jan'y*, 1884.

Ninety days after date, without grace, we, jointly and severally, promise to pay to the order of the Bank of British Columbia, at the Bank of British Columbia, in this city, five thousand dollars, for value received, with interest after maturity at the rate of eight per cent. per annum until paid, principal and interest payable in U. S. gold coin, and in case suit is instituted to collect this note or any portion thereof we promise to pay such additional sums as the court may adjudge reasonable as attorney's fees in said suit.

B. D. $\frac{23}{8}$.

J. H. FOSTER & CO.
J. A. CRAWFORD.

[On margin:] Bank of British Columbia, Portland, Oregon.

Bank of British Columbia. Paid Feb. 15, 1884. Portland, Oregon.

(Endorsement on back of foregoing note:)

Bank of British Columbia. Paid Feb. 15, 1884. Portland, Oregon.

894 DEFENDANTS' EXHIBIT No. 9. Geo. H. Durham, Master.

$6,000.00. ALBANY, OREGON, 23 *Octo.*, 1882.

Sixty days after date, without grace, we or either of us promise to pay to the order of Jno. Conner, at the banking office of John Conner, six thousand dollars, for value received, with interest after maturity at the rate of ten-twelfths of one per cent. per month until paid, principal and interest payable in United States gold coin, and in case suit is instituted to collect this note or any portion thereof we promise to pay such additional sum as the court may adjudge reasonable as attorney's fees in said suit.

No. 1515. Due Dec'b'r 2d, '82.

J. H. FOSTER & CO.
JNO. A. CRAWFORD.

(Endorsements on back of foregoing note:)
Dec'b. 30, '82, ch'g'd ac. $15.00, int. to Jan'y 1, '83.
Jan'y 31, '83, ch'g'd ac. $50.00, int. to Feb'y 1, '83.
Feb'y 28, '83, ch'g'd in ac. $50.00, int. to M'ch 1, '83.
M'ch 31, '83, " " ac. $50.00, int. to Ap'l 1, '83.
Ap'l 30, '83, ch'g'd $50.00, int. to May 1, '83.
May 31, '83, ch'g. ac. $50.00, int. to June 1, '83.
Ch'g'd ac., Aug't 31, '83, $150.00, int. to Sept. 1, '83.
Ch'g. ac. Sept. 29, 83, $50.00, int. to Oct. 1, '83.
Oct. 31, '83,ch'g'd ac. $50.00, int. to Nov. 1, '83.
Nov. 20, '83, p'd $3,000 on note.
Nov'b. 30, '83, ch'g'd $41.66, int. to Dec'b. 1, '83.
Pd, Dec'b'r 22, '83, two thousand dollars on note.
Ch'g'd in ac., De'b. 31, '83, $20.82, int. to Jan'y 1, '84.
Jan'y 31, '84, ch'g. $8.34, int. to Feb'y 1, '84.

895 $5,000.00. ALBANY, OREGON, 1*st June*, 1883.

One day after date, without grace, we or either of us promise to pay to the order of the First National Bank, at the bank, Albany, Or., five thousand dollars, for value received, with interest after maturity at the rate of ten-twelfths of one per cent. per month until paid, principal and interest payable in United States gold coin, and in case suit is instituted to collect this note or any portion thereof we promise to pay such additional sum as the court may adjudge reasonable as attorney's fees in said suit.

J. H. FOSTER & CO.
JNO. A. CRAWFORD.

First Nat'l Bank, No. 73, of Albany, Or. Due, 1 day note. Feb'y 1, '84.

(Endorsements on back of foregoing note:)
July 31, '83, ch'g'd ac. $83.33, int. to Aug. 1, '83.
Aug. 31, '83, " " 41.67, " " Sept. 1, '83.
Sept. 29, '83, " " 41.67, " " Oct. 1, '83.
Nov'b. 30, '83, " " 83.35, " " Dec'b. 1, '83.
Jan'y 1, '84, ch'g. ac. $41.67, int. to date.
Ja'y 31, '84, ch'g. ac. $41.67, int. to Feb'y 1, '84.

896–898 DEFENDANTS' EXHIBIT No. 10. Geo. H. Durham, Master.

$3,000.00. ALBANY, OREG., *Sept.* 12, 1878.

One year after date, without grace, I promise to pay to the order of John A. Crawford, at Albany, Oreg., three thousand dollars in gold coin of the United States of America, with interest thereon in like gold coin, at the rate of ten per cent. per annum, from date until paid, for value received, and in case suit or action is instituted to collect this note or any portion thereof — promise to pay such additional sum as the court may adjudge reasonable as attorney's fees in said suit or action.

No. —. Due ——.

J. H. FOSTER & CO.

(Endorsement on back of foregoing note:)

Rec'd June 19th, 1882.

899 DEFENDANTS' EXHIBIT No. 11. Geo. H. Durham, Master.

$8,605.00. One day after date, for value received, I promise to pay J. A. Crawford or order the sum of eight thousand six hundred and five dollars in U. S. gold coin, with interest at the rate of ten per cent. per annum from date until paid.

Albany, April 28th, 1876.

J. H. FOSTER.

(Endorsement on back of foregoing note:)

Received, April 27th, 1878, seventeen hundred and twenty-one dollars ($1,721.00), interest on the within note up to date.

900 DEFENDANTS' EXHIBIT No. 12. Geo. H. Durham, Master.

$5,325.00. One day after date, for value received, I promise to pay to J. A. Crawford or order the sum of five thousand three hundred and twenty-five dollars in U. S. gold coin, with interest at the rate of ten per cent. per annum from date until paid.

Albany, April 28th, 1876.

J. H. FOSTER.

(Endorsement on back of foregoing note:)

Received, April 27th, 1878, one thousand and sixty-five dollars, interest on the within note up to date.

901 DEFENDANTS' EXHIBIT No. 13. Geo. H. Durham, Master.

$3,000.00. One day after date, for value received, we promise to pay J. A. Crawford or order three thousand dollars in U. S. gold coin, with interest at the rate of ten per cent. per annum.

Albany, July 20th, 1875.

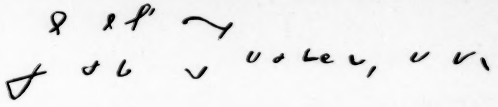
(MASTER'S NOTE.—The signature to this note, except a part of a letter J and one or two other strokes, is gone, the note being much worn & torn.

GEO. H. DURHAM, *Master.*)

902 DEFENDANTS' EXHIBIT No. 14. Geo. H. Durham, Master.

$2,000.00. One day after date, for value received, we promise to pay Jno. A. Crawford or order two thousand dollars in U. S. gold

coin, with interest at the rate of ten per cent. per annum from date until paid.

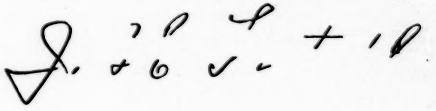


(NOTE.—A strip through the signature to this note is torn out.
GEO. H. DURHAM, *Master.*)

903 DEFENDANTS' EXHIBIT No. 15. Geo. H. Durham, Master.

$7,593.00. JAN'Y 1ST, 1875.

On the first day of January, 1876, without grace, we promise to pay to the order of John A. Crawford the *some* of seven thousand five hundred and ninety-three dollars, with interest at the rate of ten per cent. per annum *per cent. per annum* from date until paid, principal and interest payable only in United States gold coin, for value received.



(MASTER'S NOTE.—A strip through the signature has been torn out of this note.
GEO. H. DURHAM, *Master.*)

904 DEFENDANTS' EXHIBIT No. 16. G. H. D., Master.

ALBANY, OREGON, *Feb'y 1st*, 1884.

On or before the 1st day of Jan'y, 1*st* 1885, without grace, we promise to pay to the order of Frank Parton, at Albany, four thousand eight hundred and ten dollars for value received, with interest from date at the rate of ten per cent. per annum until paid, principal and interest payable in U. S. gold coin at the First National bank, in Albany, Oregon, and in case suit is instituted to collect this note or any portion thereof we promise to pay such additional sum as the court may adjudge reasonable as attorney's fees in said suit.

No. —. Due —.

J. H. FOSTER & CO.
J. A. CRAWFORD.

(Endorsement on back of foregoing note:) Marc- 1st. Rec. on the within $186.96.

905 DEFENDANTS' EXHIBIT No. 17. Geo. H. Durham, Master.

Wheat in Store.

	Bus.	Lbs.		
J. J. Ferekson	799	50		
F. Halsoper	777	30		
Miller Morgan	886	00		
W. C. Morgan	1,000	00		
John A. Crawford	1,000	00		
Mrs. C. Blunt	634	20		
J. B. Coyl	68	20		
Tob. Carter	104	45		
George Hughes	261	00		
S. Maley	120	"		
Jad Barr	54	00		
S. Slater	164			
G. F. Crawford	48			
P. Mensemmie	338	00		
W. Fry	242	00		
J. L. Anderson	515			
G. W. Gray	200			
Gus. Binding	300		7,512½	45
Jon. Weld	255	00		
Gus. Matasa	345			
James Dyer	455			
Wash. Albus	501			
S. G. Irvine	181			
G. W. Gray	310	00		
A. J. Oling	300	00		
Ruth Brown	496			
J. M. Marks	104			
L. Cox	500			
Mrs. Hardman	140	00		
Jas. Dyer	98			
E. L. Knox	142			
E. L. Cox	424			
	4,248		11,760	
906 William Cothran	325			
M. C. Chambers	773			
Robert Irving	53	00		
Jame- Dickson	576			
J. M. Marks	254			
E. & G. Cox	100			
Frank Propet	1,433			
Geo. Knox	305			
Joseph Cox	610			
John Robinett	2,006			
Cape Turner	354			
J. W. Penn	1,095			

	Bus.	Lbs.
M. H. Colwell	2,525	
A. Pearce	2,616	30
Mrs. M. Powell	541	25
A. M. Powell	215	20
A. S. Stillmaker	48	
W. C. Morgan	333	30
W. W. Crender	1,289	
C. Hardman	1,031	35
G. Cochran	90	
Warren Hurlburt	326	30
J. & F. Fry	669	
A. Snell	253	
O. Fry, Senior	649	
Robert Foster	1,398	
Mrs. Tate	251	
J. R. Baltimore	173	
A. Wolverton	185	
Mrs. Mary Brodine	573	
	21,131	50
	11,760	00
	32,891	50
	13,350	
Wheat in store	19,541	

A true copy of the original, unless some name may be misspelled, as the original is hard to read.

GEO. H. DURHAM, *Master.*

907 DEFENDANTS' EXHIBIT No. 18. Geo. H. Durham, Master.

$13,000.00. ALBANY, *Oct. 12th*, 1875.

One day after date, for value received, we promise to pay J. A. Crawford or order the some of thirteen thousand dollars in U. S. gold coin, with interest at the rate of ten per cent. per annum from date until paid.

J. N. White Mor

(A strip through the signature to this note is torn out.)

908 DEFENDANTS' EXHIBIT No. 19. Geo. H. Durham, Master.

$8,000.00.

One day after date, for value received, we promise to pay J. A.

Crawford or order the sum of eight thousand dollars in U. S. gold coin, with interest at the rate of ten per cent. per annum until paid.

All to with , ,

(NOTE.—The signature to this note and the date, except the letters Al and a few other strokes, are gone, the note being much torn & worn.)

909 DEFENDANTS' EXHIBIT No. 26. Geo. H. Durham, Master.

Memorandum.

Office of J. H. Foster & Co., proprietors of the Magnolia Flouring Mills, Albany, Oregon.

ALBANY, OR., *Jan'y* 17, 1884.

To Fred'k Townsend, Portland.

DEAR SIR: Turn over to Sibson, Church & Co. ten thousand cental sacks Magnolia flour upon they paying you the advances against same.

Yours truly, J. H. FOSTER & CO.
R. A. F.

$3.70
55000
1850.000

910 DEFENDANTS' EXHIBIT No. 27. G. H. D., Master.

Memorandum.

Office of J. H. Foster & Co., proprietors of the Magnolia Flouring Mills, Albany, Oregon.

ALBANY, OR., *Jan'y* 17, 1884.

To Sibson, Church & Co., Portland.

DEAR SIR: Enclosed please find order for ten thousand cental sacks Magnolia flour, now in store in East Portland warehouse.

Yours truly, J. H. FOSTER & CO.
R. A. F.

911 DEFENDANTS' EXHIBIT No. 28.

JAN'Y 17TH, '4.

Messrs. J. H. Foster & Co., Albany, Or.

DEAR SIRS: We duly received your favor of yesterday, with order on the Bank of British Columbia for 10,000 centals Magnolia. We have not yet presented this order, as we understand from Mr. Townsend that he requires $4.00 per bbl. advance on same. In the present condition of the market 27 | — to 27 | 6 per 280 lb is a full amount

to draw for against b. l., & this would only leave about $3.70 per bbl. advance to you. Of course, if the market recovers from its present stagnant & depressed condition, a further advance could be drawn later on. Mr. Scott advises us that he doubts whether a buyer for Magnolia or, in fact, any flour, per "Afton," could be found at 30 | —. Now, we advanced you 32 | — against this flour, & we are daily expecting a cablegram asking for margin, as the English banks
912 will not advance more than 27 | — against flour. We sold the bill against Magnolia flour per "Afton" through the Bank of British Columbia, & if Mr. Scott calls for margin will have to send it to him, & trust, if we are obliged to ask you, you will at once arrange with Mr. Townsend to let us have the same. In drawing against the "City of Madrid" a- 29 | 6 we thought this was surely a safe basis, and hope the market, before maturity of the drafts, will so prove it. The past few days has developed in the English market a state of things never before seen, and the "bear" element has the situation & are making the most of it. If under the circumstances you desire to cancel engagement by the "Beemah" we have no objections, but if not, please notify Mr. Townsend, & will then pay him the advance named & ship the flour.

Yours truly, SIBSON, CHURCH & CO.

913 DEFENDANTS' EXHIBIT No. 29. G. H. D., Master.

Memorandum.

Office of J. H. Foster & Co., proprietors of the Magnolia Flouring Mills, Albany, Oregon.

ALBANY, *Jan.* 14, 1884.

To Messrs. Sibson, Church, Portland, O.

DEAR SIR-: I know you wrote to me that you had chartered a ship and wished to know how much we wished to ship. The letter is mislay*ed* and I can't find it, but I think the above is the purport. We will furnish 500 tuns or 10,000 sacks. The flour is re-dy any time. Would like you to advance as much as *posibel.*

By dispatches see iron ships has been chartered by Lom in San Francisco.

Yours with resp., J. H. FOSTER & CO.

914 DEFENDANTS' EXHIBIT No. 30. Geo. H. Durham, Master.

Dictated Letter.

JAN. 21ST, '4.

Mess. J. H. Foster & Co., Albany, Oreg.

GENTLEMEN: We are without any reply to our last letter and desire to say that we find it necessary for the advantage of all concerned that you postpone shipment of the flour intended for the "Beemah" to a later vessel, for which we are now working, and which we hope shortly to secure. We shall see that you lose nothing in

the freight to the extent of your engagement and may possibly be able to do even a shade better in this respect, which, of course, you shall have the benefit of if we succeed. There is no better market news to advise, though we hope the worst has been seen. Should Mr. Townsend object to carrying more flour for you before ship-
room is provided we think we can pay him the advance
915 against the flour intended for the "Beemah" and so ease your account with him to that extent. Please let us know about this if you find it necessary to make such an arrangement.

Yours truly, SIBSON, CHURCH & CO.

916 DEFENDANTS' EXHIBIT No. 31. Geo. H. Durham, Master.

Memorandum.

Office of J. H. Foster & Co., proprietors of the Magnolia Flouring Mills, Albany, Oregon.

ALBANY, OR., *Jan'y* 23, 1884.

To Messrs. Sibson, Church & Co., Portland.

DEAR SIRS: I- reply to yours of the 21st would say in reply that it will be satisfactory and we will let you know about advances as soon as we hear from the bank.

Yours truly, J. H. FOSTER & CO.
R. A. F.

917 (Copy.)

DEFENDANTS' EXHIBIT No. 32. Geo. H. Durham, Master.

Know all men by these presents that I, Charles A. Neal, of the city of Chicago, county of Cook and State of Illinois, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, William M. Ladd, of the city of Portland, county of Multnomah and State of Oregon, my true and lawful attorney, for me and in my name, place, and stead, to buy, grant, bargain, sell, and assign and transfer lands, tenements, and hereditaments, bills, notes, bonds, stocks, mortgages, debts, dues, and demands, and other evidences of indebtedness, and all other kinds of real and personal property whatsoever, for such price or prices and upon such terms as my said attorney shall deem best; and to receive and make, execute, acknowledge, and deliver all necessary and good and sufficient conveyances, deeds, and other writings therefor; and to receive or deliver possession thereof for me and in my name, place, and stead; to lend and borrow money in such sums and upon such terms as to him shall seem proper, and for such sums loaned to accept and receive such security as he shall deem proper; and for all sums borrowed to give and grant such security either by mortgage of real or personal property or pledge or hypothecation of personal property or in any other manner that he may be advised; for me and in my name to sign, deal, execute, endorse, sell, hypothecate, negotiate, and otherwise dispose of bills, notes, checks,

bonds, mortgages, and other specialities and other instruments in writing whatsoever as may be necessary and convenient; for me and in my name, place, and stead to lease, demise, and let lands, tenements, and hereditaments upon such terms and for such prices as he shall deem best; and to sign, seal, execute, acknowledge, if necessary, and deliver leases therefor; and to ask,
918 demand, sue for, levy, recover, and receive all such sums of money, debts, rents, mortgages, dividends, goods, wares, dues, accounts, and other demands whatsoever which are or shall be due, owing, or payable and belonging to me or detained from me in any manner of ways or means whatsoever by any person or persons, firm or firms, corporation or corporations whatsoever, and upon receipt thereof acquittances or other sufficient releases and discharges; for me and in my name to make, seal, execute, acknowledge, and deliver; to effect insurance on any or all of said property with such insurance company or companies and on such terms as to him shall seem meet, and to sign all applications, representations, and other papers necessary therefor, and to cancel and surrender all or any of such insurance; to enter into and take possession of all lands, tenements, and hereditaments and real estate whatever to or in which I am or may be in any way entitled or interested, and to exercise the general control and supervision over the same; to prevent, forbid, and hinder, by all lawful means whatsoever, the commission of any trespass or waste upon the same or any part thereof, and at my cost and charge to sue for, collect, recover, receive, and compound for any damages which may accrue by means of the commission of any trespass or waste thereon by any person or persons whatsoever, and generally to do and perform all and every act and deed, of whatever name and nature, binding me as firmly and irrevocably by such deed or performance as if I were myself present thereto consenting, giving and granting unto my said attorney full power and authority to do and perform all and every act and deed whatsoever requisite and necessary to be done in and about the premises as fully, to all intents and purposes, as I might or could do of personally present, with full power of
919 substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In witness whereof I have hereunto set my hand and seal this 9th day of October, A. D. 1884.

CHAS. A. NEAL. [SEAL.]

Signed, sealed, and delivered in presence of—
ROBERT S. HILL.
M. BLANCHARD.

STATE OF ILLINOIS, }
Cook County, } *ss*:

I, E. F. C. Klokke, clerk of the county court of Cook county, the same being a court of record, do hereby certify that Robert S. Hill, Esq., whose name is subscribed to the proof or acknowledgement of

the annexed instrument of writing, was at the time of taking such proof or acknowledgement a notary public in and for Cook county, duly commissioned, sworn, and acting as such and authorized to take the same; that I am well acquainted with his handwriting, and verily believe that the signature to the said proof or acknowledgement is genuine, and, further, that the annexed instrument is executed and acknowledged according to the laws of the State of Illinois.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Chicago, in the said county, this 9th day of October, 1884.

[SEAL OF COURT.] M. W. RYAN, *Clerk.*

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Robert S. Hill, a notary public in and for the said county of Cook, in the State aforesaid, do hereby certify that Charles A. Neal, — is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me
920 this day in person and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this 9th day of October, A. D. 1884.

ROBERT S. HILL,
[NOTARIAL SEAL.] *Notary Public.*

STATE OF OREGON, } ss:
County of Multnomah, }

I, I. N. Sanders, county clerk in and for said county, do hereby certify that the foregoing instrument of writing was received for record at 9 o'clock a. m., the 17th day of Oct., 1884, and recorded on page 393 of Book 76 of records of deeds of said county.

Witness my hand and seal of office affixed.

I. N. SANDERS, *Clerk,*
By F. HENSHAW, *Deputy.*

A true copy.

GEO. H. DURHAM, *Master.*

921 UNITED STATES OF AMERICA, } ss:
District of Oregon, }

I, R. H. Lamson, clerk of the circuit court of the United States for the district of Oregon, do hereby certify that the foregoing is a true copy of the record and of all the proceedings, including the opinions of the court, in the cause in equity No. 1258 and entitled Charles A. Neal, plaintiff, *vs.* James H. Foster, John A. Crawford, and William Crawford, *et al.*, defendants, in said circuit court determined.

Seal United States Circuit Court, Oregon.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court, at Portland, in said district, this 28th day of September, A. D. 1888.

R. H. LAMSON, *Clerk.*
R. B. LAMSON,
Deputy Clerk.

Endorsed on cover: Oregon C. C. U. S. No. 186. William Crawford, appellant, *vs.* Charles A. Neal. Filed October 8, 1888. No. 278. Charles A. Neal, appellant, *vs.* John A. Crawford and Ashby Pearce. Filed October 23, 1888.

the freight to the extent of your engagement and may possibly be able to do even a shade better in this respect, which, of course, you shall have the benefit of if we succeed. There is no better market news to advise, though we hope the worst has been seen. Should Mr. Townsend object to carrying more flour for you before ship-
room is provided we think we can pay him the advance
915 against the flour intended for the "Beemah" and so ease your account with him to that extent. Please let us know about this if you find it necessary to make such an arrangement.

Yours truly, SIBSON, CHURCH & CO.

916 DEFENDANTS' EXHIBIT No. 31. Geo. H. Durham, Master.

Memorandum.

Office of J. H. Foster & Co., proprietors of the Magnolia Flouring Mills, Albany, Oregon.

ALBANY, OR., *Jan'y* 23, 1884.

To Messrs. Sibson, Church & Co., Portland.

DEAR SIRS: I- reply to yours of the 21st would say in reply that it will be satisfactory and we will let you know about advances as soon as we hear from the bank.

Yours truly, J. H. FOSTER & CO.
R. A. F.

917 (Copy.)

DEFENDANTS' EXHIBIT No. 32. Geo. H. Durham, Master.

Know all men by these presents that I, Charles A. Neal, of the city of Chicago, county of Cook and State of Illinois, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, William M. Ladd, of the city of Portland, county of Multnomah and State of Oregon, my true and lawful attorney, for me and in my name, place, and stead, to buy, grant, bargain, sell, and assign and transfer lands, tenements, and hereditaments, bills, notes, bonds, stocks, mortgages, debts, dues, and demands, and other evidences of indebtedness, and all other kinds of real and personal property whatsoever, for such price or prices and upon such terms as my said attorney shall deem best; and to receive and make, execute, acknowledge, and deliver all necessary and good and sufficient conveyances, deeds, and other writings therefor; and to receive or deliver possession thereof for me and in my name, place, and stead; to lend and borrow money in such sums and upon such terms as to him shall seem proper, and for such sums loaned to accept and receive such security as he shall deem proper; and for all sums borrowed to give and grant such security either by mortgage of real or personal property or pledge or hypothecation of personal property or in any other manner that he may be advised; for me and in my name to sign, deal, execute, endorse, sell, hypothecate, negotiate, and otherwise dispose of bills, notes, checks,

bonds, mortgages, and other specialities and other instruments in writing whatsoever as may be necessary and convenient; for me and in my name, place, and stead to lease, demise, and let lands, tenements, and hereditaments upon such terms and for such prices as he shall deem best; and to sign, seal, execute, acknowledge, if necessary, and deliver leases therefor; and to ask,
918 demand, sue for, levy, recover, and receive all such sums of money, debts, rents, mortgages, dividends, goods, wares, dues, accounts, and other demands whatsoever which are or shall be due, owing, or payable and belonging to me or detained from me in any manner of ways or means whatsoever by any person or persons, firm or firms, corporation or corporations whatsoever, and upon receipt thereof acquittances or other sufficient releases and discharges; for me and in my name to make, seal, execute, acknowledge, and deliver; to effect insurance on any or all of said property with such insurance company or companies and on such terms as to him shall seem meet, and to sign all applications, representations, and other papers necessary therefor, and to cancel and surrender all or any of such insurance; to enter into and take possession of all lands, tenements, and hereditaments and real estate whatever to or in which I am or may be in any way entitled or interested, and to exercise the general control and supervision over the same; to prevent, forbid, and hinder, by all lawful means whatsoever, the commission of any trespass or waste upon the same or any part thereof, and at my cost and charge to sue for, collect, recover, receive, and compound for any damages which may accrue by means of the commission of any trespass or waste thereon by any person or persons whatsoever, and generally to do and perform all and every act and deed, of whatever name and nature, binding me as firmly and irrevocably by such deed or performance as if I were myself present thereto consenting, giving and granting unto my said attorney full power and authority to do and perform all and every act and deed whatsoever requisite and necessary to be done in and about the premises as fully, to all intents and purposes, as I might or could do of personally present, with full power of
919 substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In witness whereof I have hereunto set my hand and seal this 9th day of October, A. D. 1884.

CHAS. A. NEAL. [SEAL.]

Signed, sealed, and delivered in presence of—
ROBERT S. HILL.
M. BLANCHARD.

STATE OF ILLINOIS, } ss:
Cook County, }

I, E. F. C. Klokke, clerk of the county court of Cook county, the same being a court of record, do hereby certify that Robert S. Hill, Esq., whose name is subscribed to the proof or acknowledgement of

the annexed instrument of writing, was at the time of taking such proof or acknowledgement a notary public in and for Cook county, duly commissioned, sworn, and acting as such and authorized to take the same; that I am well acquainted with his handwriting, and verily believe that the signature to the said proof or acknowledgement is genuine, and, further, that the annexed instrument is executed and acknowledged according to the laws of the State of Illinois.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Chicago, in the said county, this 9th day of October, 1884.

[SEAL OF COURT.] M. W. RYAN, *Clerk.*

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Robert S. Hill, a notary public in and for the said county of Cook, in the State aforesaid, do hereby certify that Charles A. Neal, — is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me
920 this day in person and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this 9th day of October, A. D. 1884.

ROBERT S. HILL,
[NOTARIAL SEAL.] *Notary Public.*

STATE OF OREGON, } ss:
County of Multnomah, }

I, I. N. Sanders, county clerk in and for said county, do hereby certify that the foregoing instrument of writing was received for record at 9 o'clock a. m., the 17th day of Oct., 1884, and recorded on page 393 of Book 76 of records of deeds of said county.

Witness my hand and seal of office affixed.

I. N. SANDERS, *Clerk,*
By F. HENSHAW, *Deputy.*

A true copy.

GEO. H. DURHAM, *Master.*

921 UNITED STATES OF AMERICA, } ss:
District of Oregon, }

I, R. H. Lamson, clerk of the circuit court of the United States for the district of Oregon, do hereby certify that the foregoing is a true copy of the record and of all the proceedings, including the opinions of the court, in the cause in equity No. 1258 and entitled Charles A. Neal, plaintiff, *vs.* James H. Foster, John A. Crawford, and William Crawford, *et al.*, defendants, in said circuit court determined.

Seal United States Circuit Court. Oregon.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court, at Portland, in said district, this 28th day of September, A. D. 1888.

R. H. LAMSON, *Clerk.*
R. B. LAMSON,
Deputy Clerk.

Endorsed on cover: Oregon C. C. U. S. No. 186. William Crawford, appellant, *vs.* Charles A. Neal. Filed October 8, 1888. No. 278. Charles A. Neal, appellant, *vs.* John A. Crawford and Ashby Pearce. Filed October 23, 1888.

Office Supreme Court U.
FILED,
MAR 4 1892
JAMES H. McKENNEY,
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1891.

WILLIAM CRAWFORD, Appellant,

vs.

CHARLES A. NEAL.

No. 186.

CHARLES A. NEAL, Appellant,

vs.

JOHN CRAWFORD and ASHBY PEARCE.

No. 298.

Cross-Appeals from the Circuit Court of the United States for the District of Oregon.

JOHN H. MITCHELL,
Attorney for William Crawford and John A. Crawford.

PRESS OF McGILL & WALLACE, WASHINGTON, D C.

Supreme Court of the United States.

OCTOBER TERM, 1891.

WILLIAM CRAWFORD, Appellant,
vs.
CHARLES A. NEAL. } No. 186.

CHARLES A. NEAL, Appellant,
vs.
JOHN CRAWFORD and ASHBY PEARCE. } No. 278.

CROSS-APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

These are cross-appeals from the Circuit Court of the United States for the District of Oregon.

Statement of Case.

This suit was commenced by Charles A. Neal in the Circuit Court of the State of Oregon, for the County of Linn, July 1, 1886, and on July 6 of the same year

was removed on the petition of the plaintiff Neal to the Circuit Court of the United States for the District of Oregon. The suit was brought to set aside certain conveyances of real property situate in Linn County, State of Oregon, made by the defendant, James H. Foster, to the defendants, John A. and William Crawford and Ashby Pearce, and to subject the same to the payment of two certain judgments equal in value to $15,966, with interest from March 8, 1886, and of which two judgments, it is alleged in the complaint, the plaintiff Neal is the assignee, he being a citizen of the State of Illinois, the defendants being citizens of Oregon.

The first of these judgments was rendered in the State Circuit Court for the county of Linn on the 8th day of March, 1886, in favor of Sibson, Quackenbush & Co. for $14,037.87 and costs, and interest at 8 per cent. per annum from date, aggregating $14,046.72. The second judgment was rendered in the State Circuit Court for the county of Linn on the 8th day of March, 1886, in favor of W. C. Noon & Co., for the sum of $1,920.35 with interest at the rate of 8 per cent. per annum from date. The defendant, William H. Goltra, on the 6th day of February, 1886, also obtained a judgment in said State Circuit Court against the defendant, J. H. Foster, for the sum of $14,266.34 with interest thereon at the rate of 8 per cent. per annum from said date; and the further sum of $1,302.20 with interest thereon from said date at the rate of 9 per cent. per annum; and the further sum of $196.86 with interest thereon from said date at the rate of 8 per cent. per annum from said date; and the further sum of $330,

as attorney's fees, which with costs and disbursements aggregate $16,119.70. Various other judgments were rendered in the State Circuit Court in favor of divers other persons against the defendant, James H. Foster.

On the 11th day of June, 1886, Sibson, Quackenbush & Co. assigned their said judgment as found by the court below to the plaintiff Neal, and on the 19th day of June, 1886, W. C. Noon & Co. assigned their said judgment to the plaintiff Neal. Prior to the beginning of this suit executions were issued on the said two judgments and were returned unsatisfied.

The conveyances sought to be set aside were made by the defendant, J. H. Foster, and wife, on the 6th day of February, 1884. By these conveyances, which were deeds absolnue, the defendant, J. H. Foster, conveyed to the defendant, J. A. Crawford, certain tracts of land lying in Linn County, Oregon, numbered respectively from 1 to 5 inclusive, and on the same date the defendant, J. H. Foster, and wife transferred and conveyed to the defendant, William Crawford, certain other property located in the city of Albany, Oregon, called tract No. 6, and known as the brick store property; while on February 7, 1884, the, defendant J. H. Foster, his wife not joining, conveyed to defendant. Ashby Pearce, a certain other piece of property located in said city of Albany, known as tract No. 7.

The report of the master in court, which was affirmed by the court below, found that the parties to said respective transfers, at the time the transfers were made, agreed upon the following prices for said several tracts:

Tracts 1 and 2	$38,000
Tract 3	2,500
Tract 4	500
Tract 5	3,000
Tract 6	25,000
Tract 7	4,000
Certain grain sacks and book accounts were also transferred as follows:	
Grain sacks	3,000
Book accounts	3,000
Total	$79,000

It was further found by the master and approved by the court below that in 1867 J. H. Foster and John Foster were partners in a mercantile business under the firm name of J. H. Foster & Co., and in that year bought the Magnolia Mill from William Crawford, paying $6,000 cash and executing five notes for $2,000, each of date July 1, 1867. These notes were secured by a mortgage on the mill property and a brick store, which mortgage was duly recorded. That in 1876 J. H. Foster bought out John Foster's interest in the mill and business, and assumed all the debts and liabilities of J. H. Foster & Co., and thereafter individually continued the business under the same firm name. That the business of the Crawfords with J. H. Foster was for a considerable time conducted under the name of Crawford Brothers, and was transacted by John H. Crawford, who was the agent and representative of William Crawford; that on or before the 6th day of February, 1884, J. H. Foster was owing said J. A. Crawford on notes and accounts and for money loaned and water rent, the sum of $27,733, which was then due and

unpaid, and at the time said J. A. Crawford was also liable as surety for $16,000 or thereabout upon indorsements which he had made for the accommodation of said Foster. It was further found by the master and court below that on said 6th day of February, 1884, said J. A. Crawford as a part of the consideration for said transfer, executed and delivered to J. H. Foster his note for $10,000 with the understanding that the said Foster should hold said note as security that said Crawford should perform a verbal agreement then made between said J. A. Crawford and said Foster to the effect that said Crawford should purchase the wheat of or satisfy divers persons who held warehouse receipts of said Foster for wheat stored by them with said Foster in his warehouse, which wheat Foster, it was alleged, had converted to his own use by oversales to the amount of about 20,000 bushels, and save Foster harmless therefrom. It was further found that said J. A. Crawford then agreed with Foster as a part consideration for the transfer of said property he would assume and pay the said $16,000 for which he was security for said Foster as aforesaid. It was further found that all of said indebtedness of said J. H. Foster to said J. A. Crawford was at the date of said transfer surrendered to said Foster and canceled as a part of the consideration for said property sold, deeded, and transferred as aforesaid, and that said Crawford has since taken up and canceled said wheat receipts and satisfied said note of $10,000, and has, since said 6th day of February, 1884, paid the said debts on which he was security for said Foster, and caused the same to be canceled as to said

Foster. It was further found by the court below that the purchase of said property from said J. H. Foster by J. A. Crawford, as aforesaid, was made in good faith, and that full value was paid therefor. It was also found by the court below that the conveyance to Ashby Pearce was in good faith, and that more than full value was paid therefor. The master, however, and the court below found, which finding was approved by the court, that the conveyance of J. H. Foster to *William* Crawford on February 6, 1884, was a voluntary one and that no valid consideration for the transfer existed. This was for the brick house known as "Tract 6." It was also found by the master and court below that since the transfer of said brick building by said Foster to said William Crawford, the latter has expended thereon in permanent improvements some $2,000. (See record, pp. 50–56, inclusive.)

As conclusions of law the master found and the same was approved by the court as follows:

1. That the plaintiff's bill should be dismissed as to defendants, Ashby Pearce and John A. Crawford.

2. That the deed of J. H. Foster to defendant, William Crawford, is constructively fraudulent and void as against the plaintiff and the other creditors of said Foster named in the pleadings, and should be canceled and set aside.

The defendants, J. H. Foster and others, filed answers (see record, 17), in which, among other things, it was denied that the plaintiff, Neal, was the real owner of the two judgments referred to averring that

the transfers of the same to him were made without the knowledge of said Charles A. Neal and without any consideration whatever paid or agreed to be paid by or on behalf of said Charles A. Neal to said Sibson, Quackenbush & Co., and W. S. Noon & Co., and that said pretended sales and assignments of said judgments were made for the sole and only purpose, object, and intent of collusively giving or attempting to give jurisdiction to the Federal court, and that said Sibson, Quackenbush & Co., and said W. C. Noon & Co., are now, and have been ever since the rendition of said judgements the real owners thereof respectively; and it is further averred in such answer that said Charles A. Neal the plaintiff has no interest in said judgments or either of them, except to lend to said Sibson, Quackenbush & Co., and said W. C. Noon & Co. the use of his name to prosecute suit in the United States Court. It was further denied in such answer specifically that any of the conveyances made by J. H. Foster as hereinbefore described were fraudulent or without consideration, and that each and all of them were made in good faith, and for full and adequate consideration, and denies that they or any of them were made to hinder, delay, or defraud creditors. (See record, pp. 17–25, inclusive.)

A cross-bill was also filed by James H. Foster, John A. Crawford, and William Crawford, defendants in the original suit, and for reference to which and the same is made a part hereof. (See record, pp. 68–75, inclusive.)

In this cross-bill it was alleged that on February 10, 1886, Goltra commenced a suit in the State Circuit

Court for the county of Linn against the plaintiffs to enforce the judgment held by him for $16,119.70 against Foster and against the property in general on the alleged ground that the conveyances thereof by Foster to the Crawfords and Pearce were invalid because made as alleged with intent to hinder, delay, and defraud creditorsof the grantor including Goltra and others; that the defendants in said suit answered the complaint, therein denying the allegations of fraud and alleging that said conveyances were made in good faith and for an adequate consideration, to which answer there was a reply by Goltra; that the cause was heard on the issue thus made, when the State court on July 9, 1886, found in favor of the defendants and dismissed the suit; that Goltra took an appeal to the Supreme Court of the State, where on April 11, 1887, said appeal was dismissed, whereby the judgment of the said Circuit Court remains in full force and effect.

To this cross-bill a demurrer was filed by the defendant, W. H. Goltra (see record, 77), which demurrer was overruled and the bill then taken for confessed, and that Goltra and his privies were estopped from contending that these conveyances were invalid because made to defraud creditors. Final decree was rendered on the report of the master by the court below April 6, 1888. (See record, pp. 84–86, inclusive.)

The cause in the court below was heard upon the bill, the answers of the several defendants thereto, the cross-bill of the defendants, James H. Foster, John A. Crawford, and William Crawford, and the admission by the defendant therein, W. H. Goltra, that the same

be taken for confessed, the testimony and the exceptions, and the master's report—the court below finding that the several conveyances in the bill mentioned and described from James H. Foster to John A. Crawford and Ashby, Pearce, respectively, were made in good faith for a valuable consideration and without intent to hinder, delay or defraud creditors of said James H. Foster. The court further found, however, that the conveyance in said bill described made by said James H. Foster February 4, 1884, to said *William* Crawford, and conveying to said William Crawford what was known as the brick store property in Albany, Oregon, was made without consideration, and with intent to hinder, delay, and defraud the creditors of said James H. Foster, and that at the respective dates of the judgments against defendant, James H. Foster, as alleged in the pleadings, the legal title to the property described in the conveyances aforesaid had passed to the respective grantees in said conveyances mentioned, and none of the plaintiffs in said judgments thereby acquired any lien upon said property. The court further found that at the date of the said conveyances, and at the commencement of this suit, the defendant, James H. Foster, was insolvent; and the court adjudged and decreed that the bill of the plaintiff, Neal, be dismissed as to the defendants, John A. Crawford and Ashby Pearce, and that they have and recover of and from the plaintiff their several costs and disbursements to be taxed. The court further decreeing that the conveyance by the defendant, James H. Foster, to the defendant, William Crawford be set aside and held for

naught. That the property described and included in said conveyance to said William Crawford be sold as upon an execution and the proceeds applied, first, to the satisfaction of the judgments of the plaintiff, Charles A. Neal, as assignee of Sibson, Quackenbush & Co., and W. C. Noon & Co., and the costs and expenses of sale; and, second, to the satisfaction of certain other judgments referred to in the pleadings.

From this decree each party appeals; that is to say the plaintiff Charles A. Neal from that portion of the decree holding valid the conveyances to John A. Crawford and Ashby Pearce, while the defendant, William Crawford, appeals from that portion of the decree holding fraudulent and void and setting aside the conveyance to him of the brick property in Albany by James H. Foster and wife.

Assignment of Errors.

1. The court below erred in holding that the deed of conveyance from James H. Foster and wife to William Crawford for the brick property in Albany as described in the pleadings was without consideration and void; and that the same was made to hinder, delay, and defraud creditors.

2. The court erred in decreeing that the conveyance of the brick property in Albany by the defendant James H. Foster to the defendant William Crawford was fraudulent, void, and without consideration, and in setting aside and holding the same for naught and in ordering the said property described and included

in said conveyance to said William Crawford to be sold as upon an execution, and the proceeds applied to the payment of the judgments of which the plaintiff claims to be the assignee, as in the pleadings stated.

3. The court erred in decreeing against the validity and sufficiency of the promissory notes surrendered by defendant, William Crawford, to said James H. Foster as the consideration of said conveyance to him of the brick property in Albany.

4. The court erred in entertaining jurisdiction of this suit for the reason it clearly appears from the evidence, and the whole record taken together that the alleged transfer by Sibson, Quackenbush & Co., and W. C. Noon & Co., of the judgments held by them against the defendant, James H. Foster, to the plaintiff, Neal, were merely colorable, without consideration, and made for the sole purpose of enabling this suit to be maintained in the Circuit Court of the United States.

5. The court erred in failing to hold that the alleged transfer by Sibson, Church & Co., and W. C. Noon & Co., to the plaintiff, Neal, of the judgments described in the pleadings were collusive and without consideration, and made with the sole purpose of conferring jurisdiction on the Circuit Court.

Argument.

Inasmuch as counsel for appellant, Neal, has not in his brief submitted any assignment of alleged error in the proceedings of the court below, and from which

the plaintiff, Neal, appealed, and as there is no assignment of errors in the record, we assume that the appeal of the plaintiff, Neal, has been abandoned by counsel, and that therefore the sole questions before this court relate to the validity and good faith of the conveyance from James H. Foster to the appellant, William Crawford, for the brick property in Albany.

Jurisdiction.

Our first contention relates to the jurisdiction of this court (p. 37). The transfers of the two judgments were clearly collusive, and evidently made without consideration and with the sole purpose of conferring jurisdiction on the Federal court.

The amounts said to have been paid by the plaintiff Neal as a consideration for the two judgments are of themselves significant badges of the collusive character of the alleged transfers. The judgment in favor of Sibson, Quackenbush & Co. was rendered March 8, 1886, for the full sum of $14,046.72 and interest from that date at the rate of 8 per cent. per annum; while the judgment in favor of W. C. Noon & Co., rendered on the same date, March 8, 1886, aggregated at the time of rendition $1,920.45, bearing interest at the rate of 8 per cent. per annum from that date. The amounts alleged to have been paid for these judgments respectively by the plaintiff Neal were, for that in favor of Sibson, Quackenbush & Co. $5,000, one dollar cash and a note for $5,000, and for that in favor of W. C. Noon & Co., $500, one dollar cash and a note.

The paper transfer of the judgment from Sibson,

Quackenbush & Co. (record, p. 468, 469), bears on its face abundant evidence as to the collusive character of such transfer. It is as follows:

"In consideration of the sum of one dollar and other valuable considerations, the receipt of which is hereby acknowledged, the plaintiffs in the above entitled cause (the title of the cause being given), hereby sell, assign, transfer, set over, and convey unto Charles A. Neal, of Illinois, the judgment rendered in said cause in our favor and against the above-named defendant on the 8th day of March, 1886, for $14,037.87 and costs and all moneys now due thereunder.

"Witness our hands and seals this 11th day of June, A. D. 1886.

"WILLIAM S. SIBSON. [SEAL.]
"E. QUACKENBUSH. [SEAL.]
"S. FARRELL. [SEAL.]

"Witness:
"F. W. REYNOLDS.
"REGINALD THOMPSON."

Mr. Quackenbush, one of parties plaintiff to the judgment, being called to the witness stand (see record, pp. 388–391, inclusive), states he was one of the firm of Sibson, Quackenbush & Co., and signed the paper above referred to, which is "Exhibit A" in the record. Further, we quote:

Q. You may state whether you signed that paper marked "Exhibit A?"
A. I did.
Q. What was the consideration of that?
A. As expressed in the paper, one dollar, and $5,000 in a note.
Q. Is that expressed in the paper?
A. I said as expressed in the paper, "One dollar and an additional $5,000 in a note.
Q. Who was present besides the parties whose names are attached, if any one?
A. I know of no one.

Q. Was William M. Ladd present?
A. He was not.
Q. Where was he?
A. I don't know.
Q. Were you present when the contract was made?
A. I was not.
Q. Did you know anything about it of your own knowledge, or only as explained by Mr. Sibson?
A. As I understood it Mr. Sibson made the contract on behalf of our firm with Mr. Ladd.
Q. And you signed it on his statement of the matter?
A. I did.
Q. Mr. Ladd was not present when you signed it at that time?
A. He was not.
Q. Was Mr. Farrel present when you signed it?
A. I think not, although I am not clear upon that.

* * * * * * *

On cross-examination Mr. Quackenbush states among other things, as follows:

Q. You state that you on behalf of that firm executed the assignment of the judgment to Charles A. Neal, did you not?
A. I did.
Q. Was that an assignment in good faith, transferring all that firm's interest without any reservation?
A. It was.
Q. The note that you spoke of as being the other part of the consideration, has that been paid?
A. I don't personally know.

The record in the case shows that the claim on which the judgment was rendered in favor of Sibson, Quackenbush & Co., was a claim originally held by a firm known as Sibson, Church & Co., Mr. Sibson being a member of each firm. The claim before suit having been assigned and transferred from Sibson, Church & Co. to Sibson, Quackenbush & Co.

It will be remembered Mr. Quackenbush testifies that this sale was made by Mr. Sibson. Mr. Sibson (record, 375) testifies among other things, as follows. Exhibit A being the transfer, having been shown to him, he was asked:

Q. Mr. Sibson, please examine that paper and state whether you signed that paper.
A. I did.
Q. Who signed it as witnesses?
A. Mr. Reynolds and Reginald Thompson.
Q. When did you sign it?
A. On the 11th of June, 1886.
Q. Who else signed it?
A. Mr. Quackenbush and Mr. Farrell.
Q. Were you all present when it was signed at one time?
A. My impression is that Mr. Quackenbush and I were present, and Mr. Farrell signed it later in the day.
Q. Was Charles A. Neal there?
A. No, sir.
Q. Who is this Charles A. Neal? Are you acquainted with him?
A. I am acquained with his attorney in fact.
Q. I asked if you were acquainted with him. I am not talking about his attorney in fact.
A. Not personally.
Q. Who is his attorney in fact that you are acquainted with?
A. Mr. William M. Ladd.
Q. What was the consideration of your signing that paper and Mr. Quackenbush and Mr. Farrell signing it?
A. The consideration was one dollar and other valuable considerations.
Q. Well, tell it all, please.
A. The other consideration was Mr. Neal's note for $5,000, which we received.
Q. Have you that note?
A. We have cashed the note and the proceeds are credited to the account of Sibson, Church & Co.
Q. Where did you cash it?
A. At Ladd & Tilton's bank.

Q. Did William Ladd pay you the cash?

A. The money was put to the credit of Sibson & Church's account. I do not know who did it.

Q. Did you see it charged on their books or yours?

A. I have not seen their books, but have received notice that we were credited with that amount.

Q. Upon that note?

A. Yes, sir.

Q. Did you give up the note?

A. Yes, sir.

Q. When?

A. At the time we received it.

Q. You gave it at the time you received it?

A. Yes, sir, we did. We received the note and indorsed it and paid it in and received credit for it in our account, or the proceeds of it.

Q. You received the note and indorsed it. Do you know whether the note has been paid or not?

A. It has not.

Q. When was it payable?

A. One day after date.

Q. Who signed Neal's name to the note?

A. My recollection is that it was signed by William M. Ladd, as attorney for Charles A. Neal, and William M. Ladd, as attorney in fact.

* * * * * *

Q. Who commenced negotiations for the sale of the judgment?

A. I did.

Q. With Charles A. Neal?

A. No, sir.

Q. With whom?

A. With William M. Ladd.

Q. Well, in behalf of Charles A. Neal to sell to him?

A. To sell. I asked him if he knew any one who would buy that judgment, and he said, "Charles A. Neal." I said William M. Ladd, but it was Mr. Wilcox. It was not Mr. Ladd in the bank.

* * * * * *

Q. At the time Mr. Church sold his interest in the firm

of Sibson, Church & Co. to the other members of the firm, did you not owe, or did not the firm of Sibson, Church & Co. owe largely at the Ladd & Tilton Bank?

A. I decline to answer that. The same grounds as before.

Q. At the time that you, with Sibson, Quackenbush & Co., sold this judgment to Charles A. Neal, did Sibson, Church & Co. at that time owe at Ladd & Tilton's Bank?

A. I decline to answer that.

Q. Was the credit of $5,000 that you received at Ladd & Tilton's Bank given on Sibson, Church & Co.'s account?

A. Yes, it was.

Q. Was it not in part payment of what Sibson, Church & Co. owed the bank at that time?

A. I decline to answer that question, unless instructed by the court to do so.

For full reference to the whole of the testimony of Mr. Sibson bearing upon this point (see record pp. 370–388 inclusive), wherein the transactions and dealing between the firms of Sibson, Church & Co., and Sibson, Quackenbush & Co., and their respective dealings with the firm of Ladd & Tilton, and W. M. Ladd, are fully set out.

Mr. W. M. Ladd being sworn in regard to the character of this transfer (see record, p. 393) states among other things as follows:

Q. State your name, age, residence, and occupation.

A. William M. Ladd; age, 31; residence, Portland; I am a banker.

Q. Are you one of the firm of Ladd & Tilton?

A. Yes, sir.

Q. Are you acquainted with Charles A. Neal?

A. Yes, sir.

Q. When did you last see him?

A. When he was out here this summer. I don't know whether it was July or August or June. I guess it was in August.

Q. Where does he reside?
A. Chicago.
Q. Is he a relative of yours?
A. Yes, sir.
Q. What?
A. A cousin.
Q. In this case it is claimed by one of the witnesses that you were his attorney in fact. How is that?
A. I am.
Q. About what?
A. I don't know. Whatever he may want done, I guess.
Q. About what. In relation to what business?
A. I have the power of attorney. You can see for yourself. A copy of the power of attorney is made exhibit 22. (See record, p. 537.)
Q. You may examine exhibits A and B, which you hold in your hand, and state whether you purchased the judgments mentioned therein under that power of attorney.
A. I do not know whether I did or not.
Q. You can not say?
A. No, sir. I never saw this paper before that I know or remember of (here the original papers of which the aforesaid exhibits are copies are shown to witness).
Q. Examine those carefully and state whether you have ever seen them.
A. Well, I don't recollect of ever seeing them. I may have seen them, but I have no recollection of it.
Q. Have you any recollection of making the purchases therein mentioned for Mr. Charles A. Neal?
A. I signed a couple of notes for Mr. Charles A. Neal, which Mr. Wilcox brought to me that had something to do with the Foster judgment, or Crawford judgment, or something of that kind.
Q. What was it?
A. I do not know anything about it, any more than that it was something. Perhaps you will understand my position if I explain to you how it happened. Mr. Wilcox has charge of our mill business, which Mr. Neal owns. He is the principal stock owner in the Portland mill, and my father and myself are the others, and I think possibly myself, and I do not know who else. I

can't at this time recall who they are. Mr. Wilcox manages the business, and also, in connection with Averill, manages the Sibson, Church & Co. liquidation business so far as we have anything to do with it and the mill. Sibson, Church & Co. were formerly agents of the old mills, and Sibson, Quackenbush & Co. are the agents for the new corporation, and Mr. Wilcox looks after that. He is the manager of it. He brought two notes to me to sign for Neal, and, if I remember rightly, I don't recall what was said. I do not know whether he made much of an explanation or not. *The fact is I don't know whether it was a judgment or what it was I bought for Neal.* These matters, in connection with Sibson's business and the mill business, are left entirely to him, Wilcox, and he said that "this is all right, and I signed it"—that is, he might have said those words, but I signed it just as I have signed a hundred other things.

Q. Did you have any talk with Mr. T. F. Osborn about purchasing the judgment of W. C. Noon & Co. on behalf of Charles A. Neal.

A. I don't remember, sir. Circumstances might be brought to remind me of it, but I don't remember the same with these papers.

Q. What date did you make the contract to purchase the judgment of Sibson, Quackenbush & Co. against Foster, if you made any at all?

A, I have answered the question so far as I know of it. It was done through my agent, Mr. Wilcox.

* * * * * * *

Q. Did you personally make any contract at all with Mr. Sibson, or have any talk with him about purchasing the judgment mentioned, "Exhibit A," that you hold in your hand?

A. Not that I can recollect.

Q. And did you ever see "Exhibit A" before it was shown to you here on the stand, to your knowledge?

A. Not to my recollection. I have no recollection about seeing it.

Q. Have you any recollection now, Mr. Ladd, of giving him (Mr. Wilcox) any instructions about purchasing that judgment? If you have, please state what those instructions were.

A. No, sir; I don't recollect.

Q. Have you any recollection of instructing your agent, Mr. Wilcox, to purchase the judgment mentioned in exhibit B from W. C. Noon & Co.?

A. I have no recollection.

Q. As a matter of fact has Charles A. Neal any property here of his own, and does he not hold what is in his own name in trust?

A. *I object to answering that question, sir.*

Q. I have reference to so far as this case is concerned. I don't ask for anything outside, Mr. Ladd.

A. I don't understand your question.

Q. Does Charles A. Neal, if he owns the judgments mentioned in Exhibits A and B, hold them in trust for any other person?

A. Not to my knowledge.

Q. State, if you know, who directed this suit to be commenced.

A. I don't know.

Q. Did you as attorney in fact for Charles A. Neal?

A. Not that I know of, unless through Mr. Wilcox. I don't know what the title of this suit is.

Q. This is a suit by Charles A. Neal as owner of two judgments which he claims to have purchased of W. C. Noon & Co. and Sibson, Quackenbush & Co. to set aside some conveyances that James H. Foster made to John A. Crawford, William Crawford, and Ashby Pearce of some land and other property in and about Albany. Did you as the attorney of Charles A. Neal order this suit to be commenced?

A. I don't recollect; I may have signed some papers for him in the suit. I have no recollection about it. I may have talked with Mr. Wilcox at the time I signed the notes in relation to it, but I don't remember at present anything about it.

Q. Did you employ as his attorneys Williams, Ash & Wood to commence this suit?

A. I don't think it. I don't remember of speaking to Mr. Wood in relation to it before these notes were signed. It is my impression that I had some talk with Mr. Wilcox or Mr. Wood in relation to it. Someway—that is, I knew there was some kind of a suit going on, but what the title of the suit was I did not know, because, as I said before, I had left the business to Mr. Wilcox.

Q. Did you ever notify Charles A. Neal that you had purchased those judgments for him?

A. No, sir.

Q. Did you ever notify him that the suit was commenced in his name, based on these judgments to set aside the conveyances which I have mentioned?

A. No, sir.

* * * * * * *

Q. Did Mr. Neal's money pay for those judgments?

A: *I don't know anything about it.* I have told you all I know, and if you want to get at the facts you must ask Mr. Wilcox. It is all a waste of time.

* * * * * * *

Q. Do you know whether the bank cashed the notes that you signed Neal's name to?

A. No, sir.

Q, You don't know much about the transaction, one way or the other?

A. No, sir.

For assignment of the judgment (Exhibit B) by W. C. Noon & Co. to plaintiff Neal (see record, p. 469) the consideration named being one dollar. See testimony bearing upon the character of this transfer of Thomas F. Osborn, one of the firm of W. C. Noon & Co., (record, 391, 393 inclusive) wherein he states among other things, that Neal paid one dollar and gave a note for $500, the note being signed by William M. Ladd, representing himself as an attorney for Charles A. Neal. (See Mr. Osborn's testimony in the full record; also the testimony of W. M. Ladd on the same subject.) The testimony of W. C. Noon does not seem to have been taken, nor that of any other of the three members of said firm.

A careful reading of the testimony contained in the record bearing upon this question makes it perfectly

apparent that the whole transaction was cooked up and arranged without any consultation whatever with Mr. Neal or his attorney in fact, Mr. Ladd, and was solely and exclusively an arrangement made between the respective firms of Sibson, Church & Co., Sibson, Quackenbush & Co., and Ladd & Tilton, and by which without any knowledge whatever upon the part of Mr. Neal, or of his attorney in fact, William M. Ladd, these judgments were colorably transferred to him, without any consideration whatever passing from Neal, and with the *sole* purpose in view of conferring jurisdiction on the United States Court of a suit to test the validity of the transfers from Foster to Crawford and others. This being so, it is clear the court below was without jurisdiction, and this suit should have been dismissed there, and should now be dismissed here for want of jurisdiction.

Act of March 3, 1875, Secs. 1 and 5;
Rev. Stats. 1874–1881, p. 174;
Barney *v.* Baltimore, 6 Wall., 287;
Williams *v.* The Township of Ottawa, 104 U. S., 209;
Hayden *v.* Manning, 106 U. S., 589;
Farmington *v.* Pillsbury, 114 U. S., 144;
Roe *v.* Grand Trunk R. R., 23 Fed. Rep., 401.

The plaintiff, Neal, is a young man—a cousin of Wm. M. Ladd, a nephew of Wm. S. Ladd, of the firm of Ladd & Tilton; his named was used in this whole transaction, simply as a matter of convenience, without his knowledge, without his alleged agent and attorney in fact having any real knowledge of the

transaction; he was never notified by his agent, Wm. M. Ladd, that he had purchased and became the owner of these judgments; the notes given according to the testimony have never been paid; so far as appears plaintiff, Neal, never had any knowledge that any such notes were given; all these more than suspicious circumstances taken in connection with the fact that a suit had already been decided in the State Courts, Circuit and Supreme, sustaining the validity and good faith of all the conveyances made by Foster to the Crawfords and Pearce, lead irresistably to the conclusion that the transfers of these judgments to Neal were collusive, without consideration, merely colorable, and for the sole purpose of conferring jurisdiction on the Federal Court.

The Merits.

A careful analysis of the testimony in this case conclusively shows that the same good faith characterized the conveyance of Foster to William Crawford of the brick property in Albany which the court below held characterized the conveyance of the other tracts from Foster to John A. Crawford and Ashby Pearce.

This testimony is fully set out in the record (pp. 115–539, inclusive).

This testimony will be fully analyzed in a supplementary brief to be filed in the case on the part of the appellant, William Crawford, should the question of jurisdiction be held in favor of the retention of the suit, when the principles of law applicable thereto will

be fully discussed in response to the several propositions submitted by the learned counsel for the appellee, Charles A. Neal, in the brief recently filed.

For the present, insisting mainly in this brief upon the question of jurisdiction, and on *all* points in oral argument, and praying leave of the court to file supplemental brief as to the merits in the event that my contention in this regard should be overruled, I respectfully submit the foregoing for the consideration of the court.

JOHN H. MITCHELL,
Attorney for William Crawford and
John A. Crawford.

Office Supreme Court U. S.
FILED,
MAR 16 1892
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1891.

Term No. 186.

WILLIAM CRAWFORD, Appellant,

vs.

CHARLES A. NEAL.

CHARLES A. NEAL, Appellant,

vs.

JOHN A. CRAWFORD, et al.

Appeals from the Circuit Court of the United States for the District of Oregon.

BRIEF OF

JOHN H. MITCHELL,

Attorney for William Crawford and John A. Crawford.

PRESS OF McGILL & WALLACE, WASHINGTON, D. C.

Supreme Court of the United States.

OCTOBER TERM, 1891.

WILLIAM CRAWFORD, Appellant,
vs.
CHARLES A. NEAL. } No. 186.

CHARLES A. NEAL, Appellant,
vs.
JOHN CRAWFORD and ASHBY PEARCE. } No. 278.

CROSS-APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

Supplemental Brief Relating to the Merits of the Case.

STATEMENT OF CASE.

This is quite fully set out in the brief heretofore filed in this case on the question of jurisdiction. It may be well, however, to state the following additional facts bearing more particularly upon the *bona fides* of the conveyances to John A. and William Crawford and the consideration passing respectively from John A. and William Crawford to James H. Foster therefor.

It will be remembered that John A. and William Crawford, as appears from the record, are brothers, both well advanced in years, John A. being 71 years of age in November, 1886, when his testimony in this case was taken, while William was then 75 years of age. It is further made plain by the testimony in the case that for many years past, running through all of the transactions connected with this suit, John A. Crawford transacted all of the business affairs of his brother William, including that by which the brick property in Albany was conveyed to William by James H. Foster.

It is claimed in the answer by the defendants, and all of them—James H. Foster, J. A. Crawford, and William Crawford—that on February 6, 1884, that being the date when J. H. Foster and wife conveyed, by absolute deeds, tracts 1, 2, 3, 4, and 5, as described in the complaint, to John A. Crawford, and tract No. 6, being the brick property in Albany, as described in the complaint, to William Crawford; that James H. Foster, the defendant, was deficient and short about 20,000 bushels of wheat, which he had received on storage and given warehouse receipts therefor under the name and description of "J. H. Foster & Co.," under which name and description the defendant Foster was then, and for a long time prior thereto had been, to wit, from 1876, doing business.

It is further claimed in such answer that said warehouse receipts were, on said 6th day of February, 1884, outstanding against said defendant Foster, while he had no sufficient wheat by about 20,000 bushels to meet them, nor had he purchased the wheat represented by the same; but about 20,000 bushels of wheat were due on demand from defendant Foster to various persons on such warehouse receipts.

Further, that on said 6th day of February, 1884, the defendants, J. H. Foster and John A. Crawford, John A. representing his brother William so far as the brick

property was concerned, entered into an agreement whereby defendant Foster sold and agreed to convey to said John A. Crawford the several tracts of land and parcels of property designated in the complaint as "Tracts 1, 2, 3, 4, 5, and 6," being all of the property described in the complaint, except tract 7, which was conveyed to Pearce—the conveyance for tracts 1 to 5, inclusive, to be made to John A. Crawford; that for tract 6 to William Crawford, as he, William, was the owner and holder of the notes surrendered, which constituted the consideration for the deed for that property.

It was a further part of such agreement, as stated in the answer, that defendant, J. H. Foster, should assign and deliver to said John A. Crawford all the book accounts then owned by said Foster pertaining to the warehouse and milling business and waterworks in the city of Albany, then being carried on by the said defendant, Foster, under the firm name and style of J. H. Foster & Co., the value of which accounts was then estimated to be and was in fact, as stated in the answer, about $3,000; and further, that the defendant, Foster, agreed to sell and deliver to said John A. Crawford all the grain sacks owned by defendant, Foster, pertaining to the said warehouse and milling business, the value of which was then estimated to be and was in fact, as stated in the answer, about $3,000. In consideration of all which, John A. Crawford, representing himself and his brother, William, agreed to pay to said James H. Foster a sum total aggregating about $64,000, and in addition agreed to furnish about 20,000 bushels of wheat to various persons and parties who held warehouse receipts for wheat against the said J. H. Foster under the name and description of J. H. Foster & Co., or to pay for the same and take said Foster's place and assume all his liability in regard to said wheat and warehouse receipts which Foster had given for wheat and which had not been redeemed or

purchased by said Foster, and to thus supply all the deficiency in wheat upon said warehouse receipts then outstanding against defendant, Foster, which deficiency was then estimated to be and was in fact about 20,000 bushels.

That the said sum of $64,000 so agreed to be paid for said six tracts by said John A. Crawford to defendant, J. H. Foster, was made up of the following items:

1. By said John A. Crawford paying a note of $5,000 to the Bank of British Columbia, in Portland, Oregon, which defendant, Foster, then owed and upon which said John A. Crawford was security.

2. By paying a note of $5,000 to the First National Bank of Albany, Oregon, which defendant, J. H. Foster, then owed and upon which said John A. Crawford was security.

3. By paying $1,000 on a note which defendant, Foster, then owed to John Connor, and upon which said John A. Crawford was security.

4. By paying a note of about $4,900, which the defendant, J. H. Foster, then owed to Frank Paxton, and upon which said John A. Crawford was security.

5. By surrendering up as paid and cancelled three several promissory notes upon which there was then owing from the defendant, J. H. Foster, to the defendant, John A. Crawford, the aggregate sum of $26,520.

6. By surrendering up as paid and satisfied an account of $5,803 that was then due and owing from defendant J. H. Foster to the defendant John A. Crawford.

7. That further the defendant, John A. Crawford, then and there assumed the place and liability of Foster in regard to said warehouse receipts and wheat that were short,

and furnished and supplied and paid for at his own expense and cost, to those who held warehouse receipts for wheat given by said defendant Foster, which had not been redeemed or purchased by defendant Foster, about 20,000 bushels.

8. By paying and surrendering up six several promissory notes, dated July 20, 1883, upon which there was then owing from the defendant, J. H. Foster, to the defendant, William Crawford, $16,433.

The foregoing several items, according to the answer of defendants, constituted the consideration passing from John A. and William Crawford to James H. Foster, the defendant, for the deeds of conveyance for the six tracts of property described in the complaint. The answer further states that at the request of defendant, John A. Crawford, the defendant, Foster, conveyed the tract and parcel designated as "Tract 6," being the Albany brick property, to the defendant William Crawford.

The court below, as has been stated in prior brief, found that the deeds of conveyance to John A. Crawford, covering the five tracts, were made in good faith for valuable and sufficient consideration and not for the purpose of hindering, delaying, or defrauding creditors, while the contrary was held as to the conveyance for tract 6, the Albany brick property.

It is further stated in the answer, and this is conceded, that at the date of these several conveyances, February 6, 1884, and ever since the defendant, J. H. Foster, was and has been insolvent. The answer furthermore contains a positive denial that said conveyances or any of them were made by said Foster, or received by the defendants, Crawfords, with the knowledge or belief that said conveyances or any of them were intended to or would in any manner hinder or delay said

Sibson, Church & Co., or W. C. Noon & Co., or anyone else from the collection of their just claims or dues as set forth in the complaint or otherwise, or that the said property, or any part or portion thereof, is held in secret, or in trust for defendant, Foster, or in hindrance or delay or in fraud of the rights or claims of plaintiff or anyone else.

It is further denied in such answer that the property described in plaintiff's complaint as being owned by defendant, Foster, February 6, 1884, and then conveyed by him to the defendants, Crawfords and Pearce, was at that date in the aggregate worth the sum of $110,000, as in the complaint averred, or any more or greater sum than $56,000; or that the same was, at the date of the filing of such answer, worth any more than $56,000. The answer admits that John A. Crawford and William Crawford and Ashby Pearce still hold said property under the respective conveyances, but denies that the defendant, Foster, is in the possession thereof or any part thereof or in the enjoyment of the proceeds thereof or any part thereof, save and except tract number 3, mentioned and described in the complaint, on which is a dwelling house and which has been and was at the date of the answer occupied by the defendant, J. H. Foster, as the tenant of said John A. Crawford, and not otherwise.

The issues were made up and the case referred to George H. Durham, master, for the purpose of taking testimony and submitting findings and report.

MASTER'S REPORT.

Findings of Fact.

I. That on January 19th, 1886, the firm of Sibson, Quackenbush & Co., as assignees of Sibson, Church & Co., brought their action in the Circuit Court of the State of Oregon for Linn County against J. H. Foster, and on the 8th day of March, 1886, by consideration of said court, duly recovered judgment against said Foster for $14,037.87 and costs, taxed at $8.85, and interest on the aggregate amount, $14,046.72, at the rate of 8 per cent. per annum, which judgment was docketed on day of its rendition.

II. That on February 18th, 1886, W. C. Noon & Co. brought their action in the Circuit Court of the State of Oregon for Linn County against J. H. Foster, and on the 8th day of March, 1886, by consideration of said court, duly recovered judgment against him for $1,909.15 and $11.20 costs, aggregating $1,920.35, with interest thereon at 8 per cent. per annum.

III. That on the 23d day of January, 1886, Wm. H. Goltra begun an action in the Circuit Court of the State of Oregon for Linn County against said J. H. Foster, and on the 6th day of February, 1886, the clerk of said county and court entered up a judgment in vacation against said Foster for $14,266.34, with interest thereon at the rate of 10 per cent. per annum from said date; and the further sum of $1,302.20, with interest thereon from said date at the rate of 9 per cent. per annum; and the further sum of $196.86, with interest from said date at 8 per cent. per annum; and the further sum of $330 as attorneys' fees, and costs and disbursements, taxed at $24.30, aggregating $16,119.70.

IV. That on the 27th day of January, 1886, E. Walden brought his action in the Circuit Court of the State of Oregon for Linn Co. against J. H. Foster, and on the 23d day of February, 1886, the clerk of said court and county entered up a judgment in said action against said Foster for $551, with interest at 10 per cent. per annum from said date and costs, taxed at $17.30.

V. That on January 30th, 1886, W. H. Goltra begun his action against J. H. Foster in the Circuit Court of the State of Oregon for Linn Co., and on February 23d, 1886, recovered judgment therein for $1,096.77, with interest from said date at 8 per cent. per annum, and the further sum of $50 as attorney's fees, aggregating $1,617.70 and costs, taxed at $19.30.

VI. That on February 8th, 1884, John R. Baltimore begun his action in the Circuit Court of the State of Oregon for Linn County against J. H. Foster, and on March 10th, 1884, by consideration of said court, recovered judgment against said Foster for $1,578.47, with interest thereon from said date at 10 per cent. per annum, and for $50 attorneys' fees, aggregating $1,628.47, and costs, taxed at $24.25.

VII. That on February 24th, 1886, J. S. Liles begun his action in the Circuit Court of the State of Oregon against J. H. Foster, and on the 12th day of March, 1886, recovered judgment against Foster for $1,039.80, with interest from said date at 8 per cent. per annum and costs, taxed at $9.95.

VIII. That all said judgments above mentioned were duly docketed in the docket of judgment liens in Linn County on the days of their respective rendition.

IX. That at the bringing of this suit the several judgments above enumerated were respectively owned by the

plaintiffs therein, excepting the judgments of W. C. Noon & Co. and Sibson, Quackenbush & Co.

X. That on the 11th day of June, 1886, Simpson, Quackenbush & Co., assigned their said judgment to complainant, and on the 19th day of June, 1886, W. C. Noon & Co. assigned their said judgment to complainant; that for the purposes of this suit complainant has owned said judgments since the dates of their respective assignment to him, and now is the owner thereof.

XI. That prior to the beginning of this suit executions were duly issued on the judgments last mentioned (Sibson, Quackenbush & Co. and W. C. Noon & Co.) and were returned unsatisfied.

XII. That Foster was insolvent on February 6th, 1884, and since said time has been insolvent, and has no property out of which the judgments of complainant and the other judgment creditors can be satisfied.

XIII. That on the 6th day of February, 1884, the defendant, J. H. Foster, and wife transferred and conveyed by deed absolute to defendant, John A. Crawford, the following property, to wit:

Tract 1. All that certain piece or parcel of land in the town (now city) of Albany, Linn County, Oregon, and known and described as the "Mill lot," bounded on the south by an alley dividing block 12, running east and west; on the east by a line running from the east end of said alley along the east boundaries of block No. 12 and No. 1, in said town (now city), and on the same range to the mouth of the Calapooia Creek up to the mill-dam; thence along said mill-dam to the west side of said stream, at the usual stage of water in the dam; then along and up said stream to a point immediately west

of the place of beginning; thence east, across said stream to where said alley dividing block No. 12 strikes the said Calapooia, together with the mill-dam water-power, building, and machinery belonging or appertaining to said lot and mill, and also the mill-race or tail-race leading from said mills, together with all tenements and hereditaments and appurtenances thereunto belonging or in anywise appertaining, saving and excepting therefrom the following: a race leading from the mill-dam on or near said premises, formerly—to a saw-mill belonging to Walter and Thomas Montieth and now leading to the flouring mill of Thomas Monteith & Son, with the right at all times to repair and use the same, the said race, for the purpose of conveying the water of said creek from said dam through said premises, the defendant Foster to have the absolute right to take from said water above said dam seven hundred and twenty (720) cubic inches thereof, with the full, complete, absolute right to use any and all of the residue of said water which the owners of said race leading from said dam to the flouring mills of Thomas Monteith & Son may not wish to take from said dam through said race; provided, however, that the said J. H. Foster should keep said dam as high as it was on October 4, 1855, and also in good repair, and in case of destruction to have a reasonable time in which to rebuild it; which said conveyance was on February 7, 1884, recorded in book 27 of deeds, Linn County, Oregon, page 500.

Tract 2. A right of way for a flume and ditch eight feet wide at the bottom and the sides sloping outward at an angle of 45, over and through the west side of fractional lot No. 8, in fractional block No. 13, in the city of Albany, Linn County, Oregon, as follows, to wit: Commencing at a point at or near the southwest corner of said fractional lot 8 aforesaid, and running thence northerly along the western portion of said fractional lot 8 aforesaid on the line and ground occupied by the flume and ditch now built

and constructed on the western part of said lot 8 aforesaid to the northern line of said fractional lot 8 aforesaid; also the right of way for said flume and ditch, eight feet wide at the bottom, the side sloping outward at an angle of 45, over and through the west side of fractional lot one (1), in fractional block 13, and also over and through the west side of fractional block 12, all in the city of Albany, Linn County, Oregon; the said right of way to be located on the center line of the ditch and flume now built on said right of way or premises for the purpose of conveying the water of the Santiam water-ditch or canal to the flouring mills known as the "Magnolia Mills," and extending four feet wide on each side of said center line of said flume or ditch at the bottom thereof, commencing at the southern boundary line of said fractional lot one (1), in said fractional block 13 aforesaid, and running thence northerly on the line where said ditch or flume is now built, through the western portion of fractional lot 1 and through the western portion of fractional block 12 aforesaid, the whole distance thereof from south to north, and the right to pass water through the same at all times at its full capacity the whole length of said ditch and flume for the purpose of transportation or other purposes, and to dig said ditch to any necessary depth to pass the water of the Santiam water-ditch and canal through the same, and the right to enter upon the premises above described for the purpose of building, repairing, constructing, and using said ditch and flume for the purpose for which it was built, without doing any unnecessary damage to the premises through which said right of way passes, which conveyance was recorded in Book 27 of Deeds, as aforesaid, p. 499, Feb. 7, 1884.

Tract 3. Block 55 in the city of Albany, Linn County, Oregon, as the same is designated and numbered on the maps and plats of said city now on file in the office of the county clerk of said Linn County, save and except

two lots on the west side of said block heretofore sold to Maggie I. Foster (now Powell), which conveyance was recorded in Book Z of Deeds, as aforesaid, p. 520, Feb. 7, 1884.

Tract 4. Lot No. one (1), in block No. 11, in the city of Albany, Linn County, Oregon, which deed was recorded in Book Z of Deeds, as aforesaid, p. 519, Feb. 7, 1884.

Tract 5. An equal undivided one-half of the Albany water-works, including hydrants, pipes, and mains, and all stock on hand February 6, 1884, being situated in the city of Albany, Linn County, Oregon, and known as Foster and Crawford's water-works, which conveyance was recorded in Book Z of Deeds aforesaid, p. 522.

XIV. That on the 6th day of February, 1884, the defendant, J. H. Foster, and wife, transferred and conveyed to defendant, Wm. Crawford, the following-described property, to wit:

Tract 6. Commencing 8 feet west of the southeast corner of lot 4, in block 6, on First street, in the city of Albany, Linn County, Oregon, at the center of the wall between the building known as the Foster block and that now owned by Otto Fox and occupied by J. Gradwohl, running thence west parallel with said street 74 feet to the center of the partition wall between said Foster block and the building formerly occupied by Monteith and Lentenbach, and from thence north 100 feet to the alley, thence east at right angles along the alley 74 feet to a point parallel with the place of beginning, and from thence south parallel with the center line first above described to the place of beginning, so as to include the brick store now, Feb. 6, 188–, occupied by Mason and Foshay, L. E. Blain, Will Bros., and Mr. Ewart's jewelry store, with the offices and halls above, with all and singular their rights and appurtenances of every name, nature, and description, recorded in Book Z of Deeds aforesaid, p. 521, on Feb. 7, 1884.

XV. That on February 7, 1884, defendant, J. H. Foster, his wife not joining, conveyed to defendant, Ashby Pearce, the following-described property, viz.:

Tract 7. Commencing at a point on the north side of First street, in Albany, Linn County, Oregon, twenty-six feet, more or less, east from the southwest corner of lot 7 of block 4 of said city, on the north and south line between John Foster and James H. Foster, the defendant herein; thence north on the center of the brick wall to the north side of the alley that divides block 4 of said city, running east and west; thence along south side of the alley 25 feet, more or less, to the center of the brick wall on the east side of the brick house on said land; thence south through the center of said wall to the north side of First street of said city; thence west along the north side of First street to the place of beginning; which said deed was recorded July 8th, 1884, in Book Z of Deeds, as aforesaid, page 536.

XVI. That the parties to said respective transfers at the time the transfers were made agreed upon the following prices for said several tracts:

Tract 1 and 2	$38,000
" 3	2,400
" 4	500
" 5	3,000
" 6	25,000
" 7	4,000
Grain sacks	3,000
Book accounts	3,000
	$79,000

XVII. That at the time of the transfer the said several parcels of property, real and personal, so transferred by Foster to J. A. Crawford were fairly and reasonably worth—

Tract 1 and 2		$30,000
" 3		2,500
" 4		500
" 5		3,000
Book accounts		3,000
Grain sacks		3,000
Total		$42,000
The property conveyed to William Crawford at the time of the transfer was actually worth		18,000
The real property conveyed to Ashby Pearce was at the time of the transfer actually worth	$3,500	
And the personal property	700	
Total		4,200
		$64,200

XVIII. That in 1867 J. H. and John Foster were partners in a mercantile business under the firm name of J. H. Foster & Co., and in that year bought the "Magnolia Mill" from Wm. Crawford for $16,000, paying $6,000 cash and executing five notes for $2,000 each, of date July 20th, 1867. These notes were secured by a mortgage on the mill property and a brick store, which mortgage was duly recorded.

XIX. That in 1876 J. H. Foster bought out John Foster's interest in the mills and business and assumed all the debts and liabilities of J. H. Foster & Co., and thereafter individually continued the business under the same firm name.

XX. That the business of the Crawfords with J. H. Foster was, for a considerable time, conducted under the name of Crawford Bros., and was transacted by John A. Crawford, who was the agent and representative of Wm. Crawford.

XXI. That on or before the 6th day of February, 1884, J. H. Foster was owing said J. A. Crawford on notes and accounts for money lent and water rent the sum of $27,733, which was then due and unpaid, and that at the time said J. A. Crawford was also liable as surety for $16,000, or thereabouts, upon indorsements which he had made for the accommodation of said Foster.

XXII. That on said 6th day of February, 1884, said J. A. Crawford, as a part of the consideration for said transfer, executed and delivered to J. H. Foster his note for $10,000, with the understanding that said Foster should hold said note as a security that said Crawford should perform a verbal agreement then made between said J. A. Crawford and said Foster to the effect that said Crawford should purchase the wheat of or satisfy divers persons who held warehouse receipts of said Foster for wheat stored by them with said Foster in his warehouse, and which wheat Foster had converted to his own use to the amount, in all, of about 20,000 bushels, and save said Foster harmless therefrom.

XXIII. That said J. A. Crawford then agreed with said Foster that, as a part consideration for the transfer of said property, he would assume and pay the said $16,000 for which he was security for said Foster as aforesaid.

XXIV. That all of said indebtedness of said J. H. Foster to said J. A. Crawford was at the date of said transfer surrendered to said Foster and cancelled as a part of the consideration for said property so deeded and transferred as aforesaid, and that said Crawford has since taken up and cancelled said wheat receipts and satisfied said note of $10,000, and has since said 6th day of February, 1884, paid said debts on which he was security for said Foster and caused the same to be cancelled as to said Foster.

XXV. That the purchase of said property from said J. H. Foster by J. A. Crawford as aforesaid was made in good faith and that full value was paid therefor.

XXVI. That the defendant Ashby Pearce was an accommodation maker only of the note to J. H. Foster & Co. which said Pearce afterward paid to John Connor; that at the date of the transfer by J. H. Foster to said Pearce as aforesaid said Foster was indebted to Pearce in the amount of said note so paid by Pearce as surety for Foster; said note was for $5,000; that the purchase of said property by Pearce was in good faith and that more than full value was paid therefor.

XXVII. That on the said 6th day of February, 1884, said J. H. Foster was not indebted to William Crawford; that the mortgage referred to in finding XVIII was prior to its satisfaction on the record, which took place on the 31st of July, 1883, paid in full; that said mortgage was satisfied of record by Wm. Crawford on the last-mentioned date; that no valid consideration for the transfer of the brick block to said Crawford by said Foster passed from said Crawford to said Foster; that said conveyance of said brick building by said Foster to said Crawford was a voluntary one.

XXVIII. That since the transfer of said brick building by said Foster to said Wm. Crawford the latter has expended thereon in permanent improvements some $2,000.

XXIX. That the value of the property in controversy herein, exclusive of costs, is over $5,000; that the citizenship of the parties to this suit is as alleged in the bill.

CONCLUSIONS OF LAW.

As conclusions of law I find:

I. That the complainant's bill should be dismissed as to defendants Ashby Pearce and John A. Crawford.

II. That the deed of J. H. Foster to defendant, Wm. Crawford, is constructively fraudulent and void as against the complainant and the other creditors of said Foster named in the pleadings, and should be cancelled and set aside.

Respectfully submitted,

GEO. H. DURHAM, *Master.*

(Record, 50–56.)

Exceptions to Findings of Master.

Both parties filed exceptions in the court below to the findings of the master; that is to say, defendant, William Crawford, through his solicitors, excepted to the findings affecting him (Record, 63, 64), while the plaintiff, Neal, by his solicitors, excepted to such findings as affected him adversely (Record, 66, 67).

Assignment of Errors.

For assignment of errors in this case, see Brief on Jurisdiction heretofore filed, pages 10, 11.

As stated in the former brief, by permission of the court, a cross-bill was filed by James H. Foster and John A. Crawford, and decree rendered thereon in favor of the plaintiffs therein, Foster and Crawford against the defendant, W. H. Goltra (former brief, 7, 8).

It was conceded in the court below by counsel for plaintiff and found by the court that the conveyance to defendant Pearce was made for a full consideration, as

found by the master, and with no other purpose than to prefer him to other creditors, as follows:

"On the argument it was tacitly conceded that the conveyance to Pearce was made for a full consideration as found by the master, and with no other purpose than to prefer him to other creditors, as the grantor lawfully might, and of this there can be no doubt on the testimony." (Opinion, Record, 887).

While the transaction, as appears from the pleadings as well as the testimony, was really one transaction, in so far as the conveyance of the six tracts are concerned, between the defendant Foster and the defendant John A. Crawford, they have been treated by the court below in its findings and decree as two separate and distinct transactions—the one being between James H. Foster and John A. Crawford, covering tracts from 1 to 5, inclusive; the other a separate transaction between defendant Foster and defendant William Crawford, covering tract 6, being the brick property in Albany.

The case will be treated, therefore, at this time as two separate and distinct transactions—the one between James H. Foster and John A. Crawford as to the five separate tracts; the other as a transaction between James H. Foster and William Crawford as to tract 6, William Crawford acting by and through his representative, John A. Crawford.

Although there is no assignment of error either in the record or in the brief of counsel for plaintiff, I find the greater portion of his brief—namely, commencing with Point No. II, page 14, to the end—is devoted to an effort to convince the court that the conveyance from Foster to John A. Crawford for the five separate tracts was without valid consideration; that it lacked good faith and was made to hinder, delay, and defraud creditors, and that, therefore, the decree of the court below in that regard is erroneous, and should be reversed.

The first fourteen pages of counsel's brief are devoted to the transaction between defendant, Foster, and William Crawford in a somewhat labored effort to convince the court that *that* transaction was not in good faith and that the decree of the court below in that regard should not be disturbed.

THE CONVEYANCE FROM FOSTER TO WILLIAM CRAWFORD WAS IN GOOD FAITH SUPPORTED BY A VALID CONSIDERATION, AND WITHOUT INTENT TO HINDER, DELAY, OR DEFRAUD CREDITORS.

To this contention will attention first be given, and it will be treated, as it was properly treated, as we think, by the court below, as a separate and distinct transaction, wholly independent and outside of the transaction between Foster and John A. Crawford—just as separate and distinct as was the transaction between Foster and Crawford and that between Foster and the defendant, Pearce, resting upon its own consideration and wholly disconnected with the transaction and conveyance between the defendant Foster and the defendant John A. Crawford.

Now, what are the facts? What is the claim of the defendant, William Crawford, as well as the defendant Foster in regard to this particular transaction, and to what conclusion does the weight of testimony lead?

It is clear from the testimony that in 1867 William Crawford conveyed the Magnolia Mills to the defendant, Foster, and his brother John Foster, the firm then being James H. Foster & Co., the purchase price being $16,000, and $6,000 of which amount were paid in cash down to John A. Crawford, he acting for William, and for the balance five notes were given as of the date of the purchase, to wit, July 20, 1867, signed by J. H. Foster and John Foster, of $2,000, each payable respectively 1, 2, 3, 4, and

5 years after date, each bearing 10 per cent. interest per annum from date. These notes were made payable to William Crawford or order and were secured by mortgage on the property. (Record, 526).

It is further claimed by the defendants, Foster and William and John A. Crawford, that on or about July 20, 1883, which it will be remembered was many months prior to the date of the conveyance from Foster to William and John A. Crawford, as in complaint stated, these 5 notes still being due and unpaid, except certain amounts of interest paid thereon before that date, an arrangement was made between the defendant Foster and the Crawfords, by which these 5 notes were to be surrendered and cancelled by the execution and delivery to William Crawford or order (record, 526–528) of the 6 new notes, 5 of which were to cover the principal of the original 5 notes, the 6th to cover the interest then due thereon, amounting to some $6,000. These new notes bore date July 20, 1883, the same day of the month, it will be perceived, as did the 5 notes cancelled; and the first 5 for $2,000 each were made payable respectively 1, 2, 3, 4, and 5 years after date and bearing 8 per cent. interest from date until paid, while the note of $6,000, covering the interest, bore the same date, and was payable 1 year after date without interest. These 6 notes were signed "J. H. Foster & Co." (Record, 556.)

The claim upon the part of defendants is that at the date of the conveyance by J. H. Foster and wife to William Crawford of tract 6, being the brick property in Albany, these 6 notes, principal and interest, were due and unpaid, and the consideration passing from William Crawford to J. H. Foster for this conveyance was the cancellation and surrender to him by William Crawford, he acting by his agent, John A. Crawford, of these 6 notes.

If this claim upon the part of defendants be true, then there can be no question as to the *bona fides* of that transaction. The contention upon the part of the plaintiff is that this claim is from beginning to end absolutely false. The claim is true as a matter of fact, otherwise it is based on the grossest and most willful perjury, not only on the part of *one* man, but upon the part of *three* men, namely, the defendants, William Crawford, John A. Crawford and James H. Foster, each of whom, it may be said, is among the oldest and most worthy pioneers and citizens of the State of Oregon.

Each of these defendants, William Crawford, John A. Crawford, and James H. Foster, testifies in the most positive terms that these six notes were given in lieu of the five unpaid notes referred to. Each of them testifies in the most positive manner that these six notes were unpaid, principal and interest, on February 6, 1884, and that J. H. Foster & Co. were then indebted thereon to William Crawford the amounts specified therein, and that they, and each of them, were cancelled and surrendered to J. H. Foster, defendant, in consideration of the deed to William Crawford for the Albany property.

To succeed, therefore, in the contention on the part of the plaintiff that the decree of the court below should stand in reference to this transaction, it is necessary that this court should be convinced that each of these three defendants has been guilty of flagrant perjury.

Now to the testimony of the defendants themselves, after which will be considered the testimony upon which it is claimed upon the part of counsel for the plaintiff that these positive sworn statements must be overthrown.

THE TESTIMONY OF WILLIAM CRAWFORD, GRANTEE.

First as to the testimony of William Crawford (Record, 418, 419).

In response to question he says:

My name is William Crawford; residence, Albany, Oregon; age, 75 years; am a defendant in this case; am not engaged in any occupation now, as I am not able to do so; I used to follow milling.

(Here the six notes marked Ex. 6 are shown the witness.) (Record, 526).

I am the William Crawford named in these notes. These notes were given in lieu of the five notes marked Ex. 7. My brother, John A., did the business for me. He has acted as my agent since 1856, when we got the mill first. He has transacted all my business since that time. These five notes were at ten per cent. interest when the legislature passed the law that ten per cent. was to be the legal interest; we reduced the interest two per cent., and Foster was not to take the same out of his indebtedness. He was to pay the taxes. He told me that John and him had made an arrangement that he, Foster, was to pay the taxes on all the notes that I held of his. I don't recollect that I was notified by Stewart that I would have to pay the taxes on the mortgage given to secure the five notes (Ex. 7.).

James H. Foster, as a matter of fact, owed me the five notes, Ex. 7, except what was endorsed thereon, when the six notes were given to take them up. I recollect the time Foster deeded me the brick block. When he did so John took these six notes and turned them in to Foster. *Foster owed all of these six notes, every dollar of them, at the time he deeded me the brick block, in Feburary, 1884.*

My brother surrendered up these notes, Ex. 6, when the deed was made. I was not present at the transaction of making said deed; my brother acted for me. I authorized my brother to act for me in taking that deed of February 6, 1884. Whether it was at the time these five notes, Ex. 7, were made or shortly after, Foster told me in my brother's presence that the arrangement was that

Foster should pay the taxes on these five notes. I hold that brick block deeded to me by Foster in trust for no person but myself. Wm. Foster has no interest in it, directly or indirectly. No, sir; there is no agreement nor was there any that Foster should have any interest in that property, and I don't hold it for any one but myself. The five notes, Ex. 7, were given for the flouring mill.

The foregoing is the direct examination in full of the defendant, William Crawford, in reference to this matter.

The following is the cross-examination in full of William Crawford (Record, 419, 420):

My brother has been acting for me since 1856, at the time I got the mill, and he did all the business for me, keeping accounts, etc. In the way of keeping accounts, etc., he has done all the business for me. I followed the milling business, and he did all other. At the time these notes, Ex. 7, were taken, my brother sold the mill. I was present when the notes were taken; they were laid on the table. The mill belonged to me at that time. My brother had no interest in it then. I suppose my brother received the payments that are indorsed on these five notes, Ex. 7; I didn't. My brother didn't pay the money over to me. These notes, Ex. 7, were in the safe up at the house from the time they were given to July, 1883. I had keys to the safe, and John had too. I could see them whenever I wanted to.

I seen them several times prior to July, 1883, and told John not to let the notes run out by being too long without payment, and he said he wouldn't. I didn't have anything to do with Foster; he done it all. I know of my own knowledge that these notes, Ex. 7, were not paid off until they were paid off with these, Ex. 6. I know when he took these notes, Ex. 7, to Foster and brought these notes, Ex. 6. I saw notes, Ex. 7, when John took them away; saw them in his hand. I can't tell what date he took them away; I can't recollect dates now unless I seen the date marked on the paper. I couldn't say that these notes, Ex. 6, were given on July 20, 1883, but I think it was that time. I didn't see them given. I wasn't present, and didn't hear the arrangement between

John and Mr. Foster at the time the notes, Ex. 6, were given. All I know about that affair is what my brother and Mr. Foster told me; they did the business themselves.

Q. State what arrangement was made between yourself and your brother whereby it was agreed that you should take the deed to the brick house in your name—the deed from Foster in 1884?

A. The arrangement betwixt me and my brother was to have them secured that I wouldn't lose them. We didn't talk about the brick building here, and I didn't know what he was to get, and then when he saw Foster again he told me. He told me I was to get the brick store. The object in taking the brick store was to secure me in the payment of them six notes (Ex. 6). I cancelled the mortgage of record given to secure Ex. 7. I cancelled the mortgage not to pay taxes on it and Foster on the notes. No; I wasn't paying taxes on it prior to the cancellation. I had no agreement with Foster, only he told me that he and John had arranged that Foster was to pay the taxes on notes in Ex. 6. I made no arrangements with Foster in anything. My brother John has no interest at all in the brick store.

Q. The consideration named in the deed to the brick store was $25,000, and the amount of those six notes marked Ex. 6 is $16,400. Did you pay your brother the difference between the notes and the consideration named in the deed?

A. At the time the mill was sold my brother got $6,000 in money and notes. I told him to put it away in the safe. He didn't give me any account of that money, and he had that $6,000. He told me that Foster paid him, I think, $3,000 on notes besides those in evidence. I consider that was paying it. John owed me that. Foster got it from him; at least he told me so. I couldn't say how much my brother owed me in February, 1884, at the time I got the deed. I know he got that and got some other money of me. He hasn't owed me the $6,000 ever since 1867. He loaned the Odd Fellows $5,000 and took the note in my name. When the Odd Fellows paid it they paid it to him, John, and John used it. I didn't get it. John had more than enough for to make out from the $16,400 to the $25,000. These six notes, Ex. 6, are worth more than the house now, if they could be col-

lected. I am not the owner now of these six notes, Ex. 6. I was, but they were given to Foster for the brick. I did not see those six notes delivered up to Foster. The way I know Foster owed every dollar of those notes is that the notes were there and John took them to Strahan's that night when he was getting the deeds. I never knew what Mr. Foster owed my brother; I knew he owed him, but what I don't know. My brother never told me how much Foster owed him. I don't recollect whether I ever saw any notes from Foster to my brother in the safe when these notes, Ex. 7, were there. I never looked for his notes. I know he loaned him money for to buy wheat that fall; he got the mill—that Foster got it. I never looked for John's notes. Maybe I might have seen them if I had looked. He kept his notes in the same safe, in a big envelope or pocket-book. I never hunted through them. He scarcely ever told me his business. I didn't know that he endorsed for Foster until after—about the time transfer of the mill was. I knowed Foster was owing him, but what amount I didn't know.

The Testimony of John A. Crawford.

The following is from the testimony of John A. Crawford (Record, 309). His testimony bears upon the two transactions, namely, that relating to the conveyance to him for tracts 1 to 5, inclusive, and also the transaction relating to the conveyance to his brother William for tract 6, the Albany property. For the present, as bearing upon the latter transaction, I quote from his testimony:

Q. State your name, age, residence, and occupation.

A. John A. Crawford; aged, about 71; residence, Albany, Linn County, Oregon; occupation, miller. (Record, 309.)

* * * * * * *

(Here the notes marked "Exhibit 7" (Record, 311) are shown to the witness.)

Q. State whether or not those five notes marked Exhibit 7 were a part of the notes that were to be surrendered up at the time to be cancelled.

A. These five notes were surrendered to Foster before the purchase of the property.

(Here the six notes marked "Exhibit 6" are shown to witness.)

Q. State whether those notes were to be surrendered up as a part of the consideration as the purchase price of this property.

A. These notes were to be surrendered up as a part of the payment for that property. (Record, 311.)

The court will observe this witness is speaking of the whole matter as one transaction, that is of the two transactions between Foster and John A. Crawford and between Foster and his brother William:

Q. You may state what you know about James H. Foster owing these notes at that time; whether he did owe them, in fact, or whether they had been paid or any part of them paid at that time.

A. These notes I know was not paid nor any part of them at that time or before the purchase of the mill and other property. They were due at the time.

Q. State whether or not you surrendered them up to him as a part of the purchase price of the property or not.

A. I did surrender them up as a part of the purchase price. (Record, 311.)

* * * * * * *

Q. You may state whether or not you have been acting as agent for your brother William.

A. Yes, sir.

Q. How long?

A. Well, ever since the time he came to this coast, which was in 1854, and up to the present time.

Q. Have you transacted all or nearly all of the business for him?

A. I transacted it all. He scarcely transacted any business at all.

Q. You may state whether you acted as his agent in this purchase.

A. I did.

Q. You may state whether or not you took the notes marked "Exhibit 6" as his agent or whether he did the business himself.

A. I took the notes and did the business for him.

Q. You may state whether or not you took the notes marked "Exhibit 7" and did the business in connection with them.

A. I took them. I sold the property and took them.

Q. You may state what was the consideration of the notes marked "Exhibit 6;" what they were given for.

A. The consideration of the notes marked "Exhibit 6" was five notes marked "Exhibit 7," which was surrendered for those six notes.

Q. State whether they were surrendered up and new notes given for them, if you know or recollect at the present time.

A. The reason they were given up was my brother was notified that he held a mortgage against Foster, and that he would have to pay taxes on it, and my brother told me he thought it would be better not to pay the taxes on the mortgage, for Foster had agreed to pay taxes on the notes, being as they were issued at a less rate of interest, and as he had agreed to pay taxes on them he did not think it would be right to pay double taxes on it, and he told me that I might take them up and cancel them, and I told him that he would have to go and cancel the mortgage, and he did so.

Q. Was that about the time the mortgage tax law went into effect?

A. I think it was about the time, and he went and cancelled the mortgage.

Q. What was the arrangement that was entered into about the taxes by John Foster and James H. Foster?

A. Well, the taxes on them were to be paid by—Fosters.

Q. What consideration in the reduction of interest, if any, was made to Foster in payment for the taxes by him?

A. There was 2 per cent.

Q. What was the ordinary rate of interest in Linn County at the time of the execution of those notes?

A. I think it was twelve per cent.; I think there was no limit on notes at that time. It had been 18 and 20

per cent. previous to that time, but I think at the time they were given it was 12 per cent.

Q. What arrangement had been made, if any, about the payment of taxes at the time notes marked "6" were executed?

A. The same arrangement was made with regard to them.

Q. What was it?

A. I told my brother that he would have to reduce the rate of interest, and the accumulated interest, to charge no interest on that if he did not pay the cash, and Foster was to pay the taxes on them, and they were drawn up for interest at 8 per cent. with no interest on the accumulated interest. (Record, 313, 314.)

* * * * * * *

Q. That brick block that was deeded to your brother. What was that worth at that time?

A. I could not say. I think at that time the brick block was worth about $20,000.

Q. What is it worth at the present time?

A. I could not say as to that.

Q. Is it in as good condition as it was then?

A. It is in better.

Q. Have you improved it?

A. I have.

Q. How.

A. I have extended it out twenty feet, and built up offices, &c.

Q. In which direction have you extended it?

A. North. After I purchased it I had to reduce the rents.

Q. Why?

A. On account of dull times, and the parties that was in it said they could not pay the rents they had been paying.

Q. About how much have you expended in improving it since you purchased it?

A. I could not say exactly. I think about $20,000. I have not completed it yet.

Q. What was the dwelling-house and the grounds that went with it worth at the time you made the purchase— which J. H. Foster occupies?

A. I could not say exactly the worth of it. When Foster bought it he paid $3,000 for it, and when I bought it I paid him $2,500, but there was two lots struck off of one side, and his wife did not sign the deed, and I thought I paid more than it was worth.

Q. You mean that he had sold two lots that you did not purchase?

A. Yes; and his wife would not sign the deed.

Q. What is it worth now?

A. I could not say, but I would be willing to take $2;500 for it now. I have offered it several times since then for that.

Q. What is that little house that Gary occupies near the mill worth?

A. Well, I suppose it is worth $500 or near that. It is in a part of town that property don't sell very well, but it is close to the mill and is handy for one of the hands, and is worth more to me than to any one else, as it is across the street from the mill, and handy for one of the hands to live in and attend to it.

Q. Was Ashby Pearce present when you and Foster made the bargain?

A. He was not. I would state that when I made the contract or bargain I thought I was getting all of that block was the reason I paid so much for it as I did.

Q. Was not all of it deeded to William Crawford?

A. No, sir.

Q. How much was deeded to him, and who got the rest of it?

A. There was three stores deeded to my brother, and all the rest of it deeded to Ashby Pearce. The block was mentioned, and I thought I was getting all of it, but I was not.

Q. In other words, you thought you were getting all of it, including that part that was deeded to Ashby Pearce?

A. Yes, sir.

Q. How soon after the trade did you learn that you did not have it all?

A. The next day.

Q. You learned that in the court-house?

A. I looked at the number of feet he had deeded to my brother in the deed and I went and stepped along

the street and I found it was not so many feet as the block occupied, and I went and examined the deeds and I found he had deeded it to Pearce.

Q. Did you know anything about the trade to Pearce at the time you made the bargain?

A. I did not know anything about Pearce at all.

Q. Did you know anything about their business at all?

A. No, sir. (Record, 317, 318.)

* * * * * * *

Q. You may state whether James H. Foster now owns or claims any interest in the property which he sold to you and your brother on the 6th of February, 1884.

A. He does not own any interest at all in the property that he sold.

Q. The complainant alleges that you hold it in secret trust for James H. Foster. You may state how that is.

A. It was a *bona fide* sale without any trust or anything of that nature in the trade. It was a *bona fide* sale.

Q. Was there any agreement or understanding between yourself and James H. Foster at the time of the sale or at any other time that you should hold the property you purchased of him on February 6, 1884, or any part of it, for his benefit or use, or that he should ever at any time receive that property or any part of it back or that he should receive the proceeds of it in the whole or any part of the proceeds or any benefit from it whatever?

A. There was no conditions in that sale nor anything was to be reserved, and no conditions in that sale that he should get any benefit or get anything back nor any talk about it; no conditions in the sale.

Q. Was there any understanding, implied or expressed, that Mr. Foster should receive any part of that property, directly or indirectly, back on any conditions whatever?

A. *There was no conditions. He never asked for anything to be returned back—neither principal nor interest—under that contract; he was to receive no benefit nor anything of the kind. It was neither understood nor implied nor mentioned.*

Q. Do you hold that property, or any part of it, in secret trust or any trust for Foster?

A. *I hold none of it in trust—secret nor any other way—for Foster.* (Record, 327.)

The above is the testimony in full of defendant, John A. Crawford in so far as it relates to the transaction between defendant, Foster, and his brother William Crawford.

The following is the testimony elicited from John A. Crawford on cross-examination bearing upon the transaction between his brother William and the defendant, Foster:

Q. You had charge of the notes given to William Crawford, did you?
A. I had; they were in the safe in the house.
Q. Did you receive the payment made upon them?
A. I received all of the payments that was made on them
Q. Who made the endorsements on them?
A. I did.
Q. Your brother William knew but very little about it, did he?
A. Well, he knew about it; but I always did the business.
Q. You have done all of the business yourself?
A. Yes, sir.
Q. You did transact the business at one time under the name of Crawford Brothers, did you not?
A. No, sir; I never did.
Q. But you have endorsed as Crawford Brothers, have you not?
A. I saw in the books of Foster's that it was kept in that way. I never knew about that before.
Q. You had an account under Crawford Brothers, did you not?
A. Sometimes when I was gone my brother would go to the mill or order feed or flour or something like that, and it was kept in that way, but my brother and I kept separate accounts, and I did not know how Foster kept it on the books.
Q. You recognized that account on the books as your account?
A. Well, I don't know why Foster kept it that way.

Q. You recognized that account as yours when you settled, did you?

A. Well, I thought it was correct, and I settled that way.

Q. When did you tell your brother that you had given up the notes that were secured by the mortgage and taken new notes—the old notes that was for the purchase of the mill?

A. I could not tell exactly, but he told me to get new notes, and that he would cancel the mortgage. I told him that it would be right for him to do that, and he told me to get new notes and release the mortgage, and he did so.

Q. Did you tell him that you were going to get new notes for it?

A. I did, and that if he did not wish to pay the taxes he would have to cancel the mortgage, and I took new notes, reducing the interest from ten to eight per cent., and the note for the accumulated interest was taken without interest.

Q. Mr. Foster had been paying the taxes on them before, had he not?

A. I suppose so; he promised to. They were at ten per cent. when he gave them, and the regular interest had been twelve, and the interest came down to ten per cent., and brother told me to reduce the interest to eight per cent., and have him pay the taxes, and he did so.

Q. If Foster had been paying the taxes on it, why did you want it changed and have him agree to pay the taxes on it still?

A. *Well, my brother had been called on to pay the taxes. My brother was paying on the mortgage and Foster was paying on the notes, and he said that he did not want to pay on the mortgage.*

Q. You say that Foster had been paying the taxes on it for a long time before. Is that correct?

A. I think that is correct, or at least he promised to do so; that was the arrangement.

Q. Then why did not you let it remain and let Foster continue to pay the taxes on it as he had been doing before without reducing the interest to 8 per cent.?

A. Why, he would not have been entitled to it, for the interest was at 10 per cent.

Q. Why would he not have been entitled to it?

A. Because he would have been paying the regular interest on it, and he would have been paying the taxes on the notes and my brother paying on the mortgage.

Q. Could not Foster have paid the taxes on the mortage as he had been doing for a long number of years before?

A. I suppose he could.

Q. Then why did you at that time want to make the change and cancel the mortgage?

A. Well, my brother thought and I thought it would not be right for to be paying double taxes. He thought that Foster was paying on the notes and he would have to pay on the mortgage, and he said it would not be right to do so.

Q. Was that the only reason?

A. That was the only reason that I know.

Q. Was that the consideration for reducing the interest 2 per cent.?

A. That was the only consideration.

Q. That was the only consideration for reducing the interest, was it?

A. That was the only consideration.

Q. Was your brother present when you made your contract with Foster?

A. He was not.

Q. Where was it made?

A. It was made at the mill office.

Q. Who was present at that time?

A. I don't know that there was anybody present; there may have been. I could not say whether there was any one in the office or not.

Q. And you then agreed with him to cancel the mortgage and deliver it up, and the old notes, and take new ones at 8 per cent. interest if he would pay the taxes, did you?

A. Yes; that was the bargain and agreement between him and I.

Q. It was also understood that you or your brother were not to give the notes in, was it?

A. Yes, sir.

Q. Did you discuss that with Mr. Foster?

A. I did.

Q. Was that all that you talked over at that time?

A. In regard to this transaction it was.

Q. Who figured up the interest to find out the size of the notes?

A. Foster and myself both.

Q. What was the consideration for knocking off the interest on the accrued interest?

A. Well, it was by direction from my brother for to charge him no interest on the accumulated interest, as he had been paying the taxes on it all of the time, and the interest was reduced to ten per cent.

Q. When did your brother tell you that?

A. Well, it was at the time that we were making the change.

Q. At the same time that you were talking to Foster?

A. No; a day or two before.

Q. How long before?

A. Well, at the time that I went to him about the notes and told him what my brother had agreed to take, and I fetched him the old notes and surrendered them up and he agreed to the new ones.

Q. Did he pay you any money at that time?

A. I think not.

Q. Did you let him have any more money at that time?

A. I did not that I recollect of. (Record, 332–335.)

* * * * * * *

Witness was then interrogated on cross-examination as to the length of time during which the negotiations were carried on before the deeds were made February 6, 1884, and having stated they had some four or five different conversations on the subject, he was interrogated as follows:

Q. Well, when did you have the fifth conversation?

A. I don't know. I did not keep the number of conversations—whether four or five or six. We had several conversations. I don't recollect what took place in each of them. It was two or three days from the time we first talked on the subject of giving security.

Q. What day did you take down your notes and accounts to ascertain what amount he owed you and in which conversation did it occur?

A. I figured on them notes at home and took down the list of the amount of all he was owing my brother and I and then he said that there was about 20,000 bushels of wheat short and he thought that about $10,000 would about cover that short wheat, and I, over and above what he was owing my brother and I, was to release him from responsibility for that wheat. He did not think it was over 20,000 bushels of wheat, but he did not know the amount that parties held.

Q. When did you first go to Judge Strahan to see him about it?

A. Well, I could not tell. I went to my brother first and went to Strahan afterwards and he said for me to buy the property or take security.

Q. Where was Strahan when you first saw him on this business?

A. I don't recollect where he was.

Q. Did you go to his house?

A. I think I did.

Q. What time of night did you go to his house the first time?

A. Oh, it was not night at all.

Q. What time of day?

A. I don't recollect now.

Q. At the time you went to Strahan's had you and Foster agreed or figured up the amount of property that he had to sell?

A. We had not.

Q. Did you go to see Strahan again before you made the purchase?

A. No—that is, I did not go to Strahan at all until after I knew the price of the property—what he held it at—and concluded to take his proposition, then I went to see him about making out the deeds.

Q. What time did you go to see him about that?

A. Well, it was along in the evening—some time after dinner, I think.

Q. Who went with you?

A. I don't think—I think Foster went with me.

Q. Did you go to his house that time?

A. Yes.

Q. How long did you stay at his house at that time?

A. Well, I did not stay long. He said he could make out the deeds, but he did not feel like going to his office.

Q. I did not ask you what he said. How long did you stay?

A. Well, it was not long.

Q. Who carried the books—Foster's books—up there at that time?

A. The books was not carried up.

Q. Did not you have the books up there at that time?

A. No, sir; no books.

Q. Did not you carry some books and did not Robert Foster carry up some books?

A. No, sir.

Q. Were they not carried up the night before?

A. I have no recollection of being there the night before the deeds were made out.

Q. Is your memory very defective about the night before?

A. I don't think it is.

Q. Is it not one of the immaterial points that you did not try to remember?

A. Well, I know now for certain that I was not there the night before the deeds were made out.

Q. Well, were you not there two nights before?

A. I was not.

Q. Were not Foster's books there to make the statement from?

A. I never saw Foster's books there.

Q. And you are positive on that point?

A. Yes, sir; I am.

Q. If they had been there you would have known it, would you not?

A. Well, I suppose I would.

Q. You and Foster went together once, did you not?

A. Well, I suppose we did.

Q. What time were you there the next time, the second time?

A. Well, it was after dark; after supper.

Q. How long after supper?

A. Oh, just immediately after.

Q. What hour?

A. I could not say.

Q. As late as nine o'clock?

A. Oh, not as late as that.

Q. How much before?

A. I could not say.

Q. Was it five o'clock?

A. Well, it might have been five o'clock, or between five and six; I could not say.

Q. Between five and six you and Foster went there the second time?

A. Well, I don't recollect; I could not give the hour. The days were short then, and night came on pretty soon, and I never thought to look.

Q. Who else was there at that time?

A. I think—no, I did not see Mrs. Foster at that time; it was afterwards. Robert and, I think, James Foster—one of them—came and told me that they were there, and wanted me to come over.

Q. Which one came after you?

A. I could not say now.

Q. What time was it that he came for you?

A. I think it was after supper.

Q. Was that the time that you have been talking about that he came after you?

A. Well, he only came once after me.

Q. Was that the time the deeds were made out?

A. Yes.

Q. So you did not go there but once with James H. Foster?

A. No, sir.

Q. So you went there three times—twice with Mr. Foster and once with one of the boys?

A. I went once with Foster, and the second time, when Strahan was alone; and then I went once with Foster, and then they sent for me the third time to come over.

Q. What did you do at Strahan's that night, you and Foster?

A. Well, we went and explained to Strahan the nature of the property, the price of it, etc.

Q. Well, what was the etc.?

A The etc. was the price of each piece of property, the price that I was to pay for it.

Q. Was that all that you did?

A. That was all that I did.

Q. And all that Foster did?

A. No; I think Foster did something else.

Q. Well, why don't you tell it?

A. Well, he signed the deeds for it that Strahan had ready for him.

Q. How many deeds did he sign?

A. I could not tell without enumerating them up. There was one for the mill, one for his brick block, one for his dwelling-house, and one for the little house down by the mill.

Q. Were they all made separate?

A. All made separate.

Q. Four deeds?

A. Yes; four deeds.

Q. Well, was that all he did?

A. No; there was some other papers that he signed.

Q. Well, what were they?

A. They were for other property that I got. I don't know whether deeds or what they were now, but it was for the water-works and for the books and the sacks.

Q. Did he sign a paper for each of those three articles?

A. I think there was a paper for each of those articles.

Q. Did you get them?

A. I think I got them.

Q. Where are they now?

A. I can't say now; I think in my safe. I took them all to the court-house, but whether I ever got them again I can't say. (Record, 341–344.)

The foregoing is the full examination of Mr. John A. Crawford in so far as it bears upon the transaction between his brother William and the defendant Foster.

Having attracted attention to this positive and circumstantial account of these transactions by two of the parties thereto, namely, William and John A. Crawford, we now ask the attention of the court to the testimony of the defendant, James H. Foster, so far as it bears upon the conveyance by him and wife to William Crawford, of the Albany property, and in this connection the court will be reminded, as also counsel for plaintiff, that the plaintiff and his counsel made James H. Foster, the defendant, their own witness upon this subject

and are therefore bound, it is respectfully submitted, by his testimony (record, 115), which is as follows:

JAMES H. FOSTER, being called as a witness on the part of *complainant* and being duly sworn, testifies:

My name is James H. Foster; residence, Albany, Oregon; age, 63 years; occupation, not engaged in anything particular; have been attending to business for Mr. Crawford; that's my chief business now. I have lived in Albany since 1852. I was first engaged in mercantile business in Albany; kept a store from 1852 to about 1865. I think it was in 1867 that I bought the Magnolia Mills from Wm. Crawford; I think it was.

He was the party that made the deed to me and my brother.

I don't know anything about anyone else having an interest in that mill at the time we bought. The Magnolia Mill property consisted of a strip of land, the mill building and machinery in it, and a portion of the water-power of the Calapooia. The water used at the mill from the Calapooia is taken directly out of the dam; flows out of the dam into the fore-bay, in which the whole sets.

This dam was part of the mill property.

The price paid for this property was $16,000, to the best of my recollection, or the price that was to be paid. My brother and me purchased the mill property together, paying for it, I think, $16,000. We gave a mortgage on the mill and a brick house for $10,000 of the purchase price. My brother and I had equal interest in the property. I purchased his interest from him, I think, in 1876. It will be difficult for me to describe all that transaction. There were a good many debts against the firm and I assumed them, let him have some real estate, paid some money, and other things which I don't think I can now describe. Don't recollect the amount of money I paid him nor about how much. I mean that I don't clearly remember the things I have said; it would be difficult for me now to describe. I have no recollection now whether he took any notes or not. It appears to me he may have done so; I am not positive.

Q. At the time you and your brother made this deal, what did you consider his half interest to be worth?

A. I have no recollection of a definite sum being named as the value of the half interest, but, as I before stated, there was a large indebtedness against the firm, and he proposed that if I would take the responsibility of that indebtedness and relieve him from it and give him a warehouse that stood on the bank of the river and, I think, a brick building in Albany and pay him a small amount of money—I don't remember the amount now, but know it wasn't very large—and probable there were some other considerations not very important, he would deed me his interest in the mill, and I accepted his proposition. The brick house was property held between us before equally, and I only gave him my interest in that. This was not the same brick house that the mortgage was on. The mortgage was on a two-story brick, and this one I traded my brother was a one-story building. (Record, 115, 116.)

Mr. James H. Foster also testified as follows (Record, 200):

Q. State your name, age, residence, and occupation.

A. J. H. Foster; aged, 64; residence, Albany, Linn Co., Oregon; occupation, I am or have been in the employ of Mr. Crawford.

Q. Are you one of the defendants in this suit?

A. I suppose I am.

Q. Are you acquainted with John A. Crawford, William Crawford, and Ashby Pearce, the three other defendants?

A. I am.

Q. You may state whether or not you sold to John A. Crawford, one of the defendants, the property known as the Magnolia Mills, in Albany, and another property, on or about the sixth of February, 1884; and, if so, you may state the terms of the contract and the circumstances under which the property was sold.

A. About that time I sold the mill known as the Magnolia Mills to John A. Crawford. The price of said mill was $38,000. I likewise sold to him at the same time a dwelling-house and lot for $2,500, what is known as the Albany water-works for $3,000, a quantity of sacks for $3,000, book accounts and some notes for $3,000, and a

small house and lot close by the mill. I think the price of that was $500. I don't remember of anything else that I sold to him at that time.

Q. You may state to whom and when.

A. I would further state that I sold to him at the time, but the property was deeded to William Crawford, some brick blocks in Albany, for $25,000.

Q. You may state what property, if any, you sold about the same time to Ashby Pearce, one of the defendants.

A. I sold to Ashby Pearce a brick block in the town of Albany. I think the price of it was $4,000.

Q. Is this property which you have just mentioned as being sold to Crawford and Pearce the same property that is described in the complaint in this suit?

A. I have not seen the complaint.

Q. You may state whether it was all the property, or nearly all, that you owned at that time.

A. It was the muniments of all the property I owned at that time.

Q. What other property did you own at that time—I mean at the time the deeds were made out, executed to Pearce and to Crawford by you?

A. That is all the real estate I owned; there was some flour and feed and probably a few other things, household goods, &c. (Record, 200, 201.)

* * * * * * *

Q. You may now state how Mr. Crawford paid you, or was to pay you, for the property you sold to him about the sixth of February, 1884.

A. He paid me in notes that he held against me—my notes—and he paid notes off that he had endorsed for me to different parties, and he was likewise to purchase and make good to parties who held my receipts for wheat that was in store—something near 20,000 bushels of wheat that I was short in the warehouse—he was to make that amount good to the farmers; either give them his receipts for the wheat or buy the wheat from them; clear me from responsibility for the wheat; and there was an account that he had against me on a certain amount that was to be counted in the sale.

Q. You may state under what name you were then and had been doing business for a number of years prior to that time.

A. The name of J. H. Foster & Co. (Record, 207, 208.)

* * * * * * *

Q. You may state how you came to make one of the deeds to William Crawford.

A. There were part of the notes was drawn in favor of William Crawford. Mr. John A. Crawford requested me to make the deeds for the brick house to William Crawford and it was so made.

Q. What do you mean by saying there were part of the notes drawn to William Crawford? Do you mean that you owed William a certain amount?

A. I mean that part of the notes were William Crawford's notes—payable to him.

Q. Part of what notes?

A. The notes that were delivered to me for this property—in part payment, I meant to say, for this property.

Q. Whose notes—that is, who made the notes?

A. Notes given by me to William Crawford.

Q. Have you those notes with you?

A. Here are the notes that were held that belonged to William Crawford.

Q. How many are there? Just state the number in that connection, Mr. Foster.

A. Six notes.

Q. You may state whether you owed Mr. William Crawford the full amount of those six notes as they there appear at the time of the sale of the property to John Crawford.

A. *I owed those notes to William Crawford at the time of the sale.*

The master, taking the testimony at this point, made the following note:

("Here the master is requested to mark the six notes above referred to for identification. The notes are attached together and marked in blue pencil '6.'")

Q. You may state what the consideration of those six notes was.

A. The consideration of those six notes was William Crawford held five notes secured by a mortgage amount-

ing to $10,000 against me or against James H. and John Foster, and on that mortgage there was $6,000 of interest due. These six notes were given in lieu of that mortgage. They delivered up the other five notes of James H. and John Foster and cancelled the mortgage.

Q. You may state whether you have those five notes here that were given up then.

A. I have the five notes that were given up at the time these notes marked "6" were executed and delivered to Crawford.

Q. Please produce them and have them marked by the master for identification.

(Here the five notes last above referred to are marked "7" in blue pencil.) (Record, 527).

Q. You may state why these notes were cancelled or given up and new ones executed, and what agreement about the taxes, if anything, there was.

A. Mr. Crawford, in speaking of these six notes marked "6," when I gave those notes to Mr. Crawford and took up the others, he reduced the interest from ten to eight per cent. on the five notes drawn for $2,000 each, and on the $6,000 note he did not charge me any interest, and I agreed to pay the taxes on these notes, and I told him I would not take them out of my indebtedness. I think that was the words I used.

Q. What agreement was there about the payment of the taxes, if any, on the five notes marked "7" by the master?

A. I don't particularly remember about the agreement on those notes. In 1876 I remember perfectly well, though, that I agreed to pay the taxes on these notes, and I think I did so before, but I am not so positive about that as I am about the notes of 1876. I know positively I agreed to do it.

Q. What was the consideration about your paying taxes if he would let the notes run in 1876?

A. I had several reasons for it, or not several, but I had one reason for it—that was, he was allowing the interest to accumulate without ever having to pay it.

Q. Please state the consideration and what the reason if there was an agreement or consideration between you at that time. That is what I mean.

A. The consideration was that he was allowing me to keep the money, extending the time to me, and I had it at a reasonable interest.

Q. You may now state what those five notes marked "7" by the master were given to William Crawford for —that is, what was the consideration?

A. Their consideration was part of the price of the Magnolia Flouring Mills when I bought it from Mr. Crawford.

(Here both sets of notes above referred to are offered in evidence and the master is requested to make copies and substitute them for the originals, as the originals are in evidence in a case now pending in the State circuit court. The six notes first above referred to are copies, and the copies attached and marked "Defendants' Exhibit 6," and the five notes are copied, the copies attached together and marked "Defendants' Exhibit 7."

Q. Mr. Foster, you may state who executed the six notes marked "Exhibit 6."

A. I executed those notes and signed them "J. H. Foster & Co."

Q. Who executed the five notes marked "Exhibit 7?"

A. J. H. Foster and John Foster.

Q. Is John Foster your brother?

A. Yes, sir.

(Here the notes are again offered in evidence by defendants and the substitutes marked as above stated.)

Q. When were those six notes marked "Exhibit 7" surrendered to you?

A. At the time I made the sale to Mr. Crawford. (Record, 210, 212.)

On cross-examination Mr. James H. Foster testified, as bearing upon the transaction between him and William Crawford, as follows:

Q. How long did you say you had been in the milling business in Albany?

A. I purchased the mill from Mr. Crawford in 1867 and continued to February, 1884.

Q. From which Crawford did you purchase the mill?

A. I purchased the mill from John A. Crawford, but the deed, if I remember right, was made out by William Crawford; the deed came from William Crawford.

Q. Was William Crawford then holding the mill in trust for John A. Crawford?

A. I could not answer that question.

Q. What did you give for the mill?

A. The price that we were to pay for the mill I think was $16,000.

Q. How much was paid in cash?

A. I think it was $6,000, and gave a mortgage on the mill and some other property, if I remember right, for $10,000. (Record, 229, 230.)

* * * * * * *

Q. How many notes were given and included in the mortgage given to secure the $10,000 balance due on the mill?

A. Five notes of $2,000 each.

Q. Who gave those notes?

A. The notes were signed by James H. and John Foster.

Q. How much had been paid on those notes?

A. The amounts paid on them is endorsed on the notes.

Q. How much is that?

A. I don't remember.

Q. You will please ascertain so that the referee can put it down.

The master rules that he may answer the question, and notes marked "Defendants' Exhibit 7" are handed to witness, and he answers:

A. On these five notes that was given at the purchase of the mill—on this first note I find the following endorsement: "Received on the within note $400, July 20, 1869; received on the within note $1,200, interest to date, July 20, 1875; received, April 15, 1881, $400 interest on the within note;" on the second note, "received on the within note $400 interest, dated July 20, 1869; received on the within note $1,200 interest, July 20, 1875; received, April 15, 1881, $400 on the within note," and on the third note, "received on the within note

$400, interest to date, July 20, 1869; received on the within note $1,200, interest to date, July 20, 1875; received, April 15, 1881, $400, interest on the within note;" on note four, "received $400, interest on the within note to date, July 2, 1869; received $1,200, interest on the within note to date, July 20, 1875; received, April 15, 1881, $400, interest on the within note;" and note five, "received on the within note $400, interest to date, July 20, 1869; received $1,200, interest on the within note to date, July 20, 1875; received, April 15, 1881, $478.75."

Q. Do those amounts include all you have ever paid on those notes?

A. Those amounts include what I paid on those notes.

Q. Do they include all?

A. They include all.

Q. When did you pay the balance of those notes to Mr. Crawford?

A. I took them up by giving him other notes for them and their interest.

Q. Were those notes in existence and unpaid in 1879 and '80?

A. Which notes do you refer to?

Q. The ones you have, that you have been examining, marked "7."

A. I presume they must have been in the possession of Mr. Crawford; they were unpaid by me.

Q. Were they unpaid in the year 1878?

A. There was nothing paid on them in the year 1878, only what is indorsed on the notes.

Q. If they were then in existence and unpaid, state whether or not you made the statement to Mr. John Connor that that mortgage which was made to secure those notes was all paid off and settled, or words to that effect.

A. I have no recollection of making such a statement to John Connor.

Q. Did Mr. Connor call upon you about that time about the condition of your affairs?

A. If he did it has all gone from me. I have no recollection of any such a statement.

Q. Do you undertake to say that you never made any such a statement as that to Mr. Connor?

A. I have never said that I never made such a state-

ment, but I have no recollection of ever making such a statement.

Q. Did Mr. Connor ever call upon you about that time to know of your financial condition?

A. Mr. Connor said but little to me respecting my condition, to my recollection.

Q. If you made a statement of that kind to Mr. Connor, it was not true, was it, as a matter of fact?

A. These notes were certainly unpaid at that time, only what they had endorsed on them.

Q. When were those notes taken up?

A. At the time the others were given.

Q. What others?

A. The five notes that was given to William Crawford of $2,000 each and the $6,000 note for the interest that was due on the notes.

Q. How many were there of those notes?

A. There was five notes; six notes altogether.

Q. When were those notes given?

A. I would have to refer to the notes.

(Here six notes attached and designated as "Exhibit 6" are handed to witness.)

A. The notes are dated July 20th, 1883.

Q. Were those notes executed on that date and the others taken up?

A. I presume they was.

Q. Do you know whether they were or not without presuming?

A. Well that is what I am guided by at present—is the dates on these notes.

Q. I asked you for your own knowledge, regardless of the date on the notes; whether those notes were executed on July 20th, 1883, and signed by you.

A. I could not swear positively from my recollection of the day of the month at that time that it was exactly the 20th day, but that is the date of the notes, and I have no doubt but the notes was calculated to be dated on the day they were given.

Q. Could you swear positively that those notes were not executed in August following and dated back?

A. As I before stated, I have to be governed by the

date of the notes. My recollection could not extend back to that time and designate the day without something to direct me.

Q. You would not undertake to say, then, that those notes were not dated back when they were executed?

A. I have already stated all I know and can state about that.

Q. Please answer my question.

A. I say the old notes was dated July 20th, 1867—that is "Exhibit 7." There is a possibility that these notes, "Exhibit 6," might have been dated back a few days to correspond with this same July 20th of the old notes, but as to that I have no recollection. I could not positively say anything.

Q. When you say these notes, you have reference to the six notes given in lieu of the five notes which were the consideration for the mill?

A. Yes, sir.

Q. What reason have you for dating them back, if there is a possibility that they were dated back?

A. I don't know that I could give any reason positive for that.

Q. Whereabouts were you when you signed the notes contained in Exhibit "6"?

A. I presume that it was done in the mill office.

Q. If you presume it was done there, what makes you think it was?

A. Because the business that was done was generally done there.

Q. Your business or Crawford's business?

A. My business.

Q. Did Mr. Crawford come to your office to procure those six new notes?

A. I think he did.

Q. State now just what was done there and said at that time between you and John A. Crawford or William Crawford, if he was present.

A. Mr. Crawford and me had a conversation about these notes number "7;" in the conversation agreed to take notes from me for that mortgage and reduce the interest to eight per cent., and he would not charge me any interest on the interest that had accrued on the notes, and I agreed to pay the taxes or not take these

notes out of my indebtedness, and I executed those notes and delivered them, six of them, in the name of William Crawford, and delivered them to John A. Crawford, and John A. Crawford delivered to me these five notes, Exhibit "7," and agreed to have the mortgage cancelled.

Q. Did he demand the new notes of you, or did you request that he receive new notes of you?

A. In talking about the amount—the payment of the notes—I said to Mr. Crawford: If I had those notes so arranged that there would a note come due every year, one year or two years, and so on, that I thought, if times was any way favorable, I could meet a note every year and in that way pay off the debt, and in this conversation he agreed with me that he would arrange it that way, and that I should have that, and these notes are drawn in that way.

Q. Did he speak to you first about rearranging those notes, or did you speak to him first?

A. Well, that would be impossible for me to remember now. It was a good while ago.

Q. You don't remember how that conversation came up, then?

A. No; I don't remember how it came up, really, but I know that was the way it was arranged.

Q. Anything said about paying the taxes on the notes—the new notes?

A. I agreed to pay the taxes on the new notes.

Q. Who had been paying the taxes on the old notes?

A. I had.

Q. How long?

A. I think I paid the taxes on them ever since I gave them. I know I have paid on them ever since 1876.

Q. How do you know you have paid on them since 1876?

A. Because I have never taken them out of my indebtedness. I never intended to take them out, and agreed not to take them out, and I firmly believe I never did.

Q. What is the reason you fix that at 1876?

A. That is the time that I bought out John Foster and the time that I made a settlement with Mr. Crawford, giving him—taking up some notes and giving him other notes in the place of them in 1876, before I started East. (Record, 231–235.)

But the testimony of Crawford and Foster is supported by that of Hon. R. S. Strahan, at present Chief Justice of the Supreme Court of the State of Oregon, who at that time acted as counsel for these parties, prepared the deeds of conveyance, transfers, &c. (See his testimony, record, 304–309.).

Judge Strahan, after detailing the substance of the agreement between Foster and Crawford substantially as related in the testimony of Crawford and Foster, testified as follows:

Q. You may state whether or not it was a part of the agreement that Mr. Crawford should furnish to the amount of wheat that Foster was short with them or pay for it to the amount of about 20,000 bushels.

A. Yes; I think that it was. Mr. Foster said he thought he was short about that amount, 20,000 bushels, as near as he could tell; he did not know the amount. Mr. Crawford wished to know the extent of it, and that is what Mr. Foster told him.

Q. Was Mr. Crawford to take Mr. Foster's place in regard to that short wheat and release him from all liability?

A. That is the way I understood the agreement; that Mr. Crawford would perform his contract in regard to that wheat and save Mr. Foster harmless of those claims.

Q. You spoke about a note, or a paper in the form of a note, for $10,000. You may state whether that was given in payment or as a guaranty that Mr. Crawford would perform his contract in regard to that wheat.

A. I understood it was simply to secure; Mr. Foster wanted something, and that is what he agreed to take.

Q. You may state about what time it was in the day when you were requested to draw up the writings between them.

A. I can't fix the time, though it must have been some time in the forenoon or just after dinner. I had been quite unwell and confined to my house for a few days, but was able to sit up at that time, and I remember that I prepared the papers and had them ready by evening, when they were executed.

Q. About what time in the evening were they executed, as near as you can remember?

A. Just after supper; I could not state the hour. (Record, 305, 306.)

UPON WHAT CHARACTER OF EVIDENCE IS THIS COURT ASKED TO REPUDIATE AND SET ASIDE THIS POSITIVE TESTIMONY OF THESE THREE WITNESSES?

Upon what character of testimony, then, in this case is it that the positive testimony of these three witnesses is to be overthrown? It is simply this, in brief:

1. What counsel and even the court below terms "the improbabilities" of the transaction.

2. Certain alleged statements made by the defendants, James H. Foster and John A. Crawford, at different times prior to February 6, 1884, tending to contradict their *sworn statements* as to the character of the transaction.

3. The statements given by William and John A. Crawford to the assessor prior to that date of notes due them which they understood to be subject to taxation.

These several points will be examined, and first as to the testimony of C. H. Stewart, county clerk for Linn County, Oregon, recited on pages 8 and 9 of the brief of counsel for plaintiff, which is, in brief, to the effect that in July, 1883, in making up the abstract of mortgages he found one in favor of William Crawford against Mr. Foster for something like $20,000 or $25,000; that he sent Mr. William Crawford a postal card telling him to call and either make credits, if there were any, or cancel it before he had to make final report to the assessor; that Mr. William Crawford called and cancelled the mortgage He then says: "I do not remember the exact conversation, but the purport was that it had been paid off several years before and that he had no knowledge of it being upon the books of record."

Now, it must be remembered that subsequent to the passage of what was known as the "Oregon Mortgage Tax Law," which went into effect in the year 1883, that this arrangement by which the old notes were surrendered and new notes were given was entered into between William Crawford—John acting as his agent—and James H. Foster, and that as a part of that arrangement, as they *all three testify positively*, in consideration of a reduction in the amount of interest of 2 per cent.—from 10 to 8—on the notes and an extension of time, it was understood and agreed that Foster should pay all taxes, and it was further understood that this mortgage should be cancelled, Foster at that time being in entirely solvent circumstances. It is quite possible, therefore, in view of the character of the transaction entered into by which the old notes were surrendered and the mortgage was to be cancelled that Mr. William Crawford may have made the statement to the county clerk, Stewart, that the mortgage had been paid off, while it is not improbable, inasmuch as Mr. Stewart only testifies his recollection of the *purport* of the conversation, that he may have said it was paid off several *days* before, instead of several years before.

Another consideration to be borne in mind is the fact that William Crawford himself gave little or no personal attention to his business; that the same, as all the testimony shows, was transacted mainly by his brother, John A. Crawford. But conceding that William Crawford made the statement precisely as stated by Mr. Stewart, how far should that statement weigh in overturning the deliberate and positive sworn statements, not only of William but also of John A. Crawford and James H. Foster? Again, as the very purpose of the new notes and the cancellation of this mortgage clearly was to avoid double taxation on the same property, and as a matter of fact the old notes had been paid shortly before this

conversation by the execution of the six new notes, it is not strange that William Crawford should have said that the mortgage was paid.

Again, reliance is placed, for the purpose of overthrowing the testimony of defendants, upon the testimony of Mr. John Connor, of Albany, Oregon, a part of whose testimony is quoted on pages 9 and 10 of the brief of plaintiff's counsel, which was to the effect that he had a conversation with Mr. Foster sometime in 1879 or 1880, or he states it might have been in 1878—the witness evidently being unable to fix the date of the conversation within three years, in which he says:

"*I think* I spoke about that mortgage and he said it was paid."

Mr. James H. Foster, in his testimony in response to this evidence of Mr. Connor (Record, 277), says:

Q. Did you ever undertake to borrow money of John Connor some time before you made this sale to Crawford, in which he asked you about a mortgage on record in favor of William Crawford?

A. I have no recollection of that conversation.

Q. You did not tell him, then, that that mortgage had been paid off a long time ago?

A. As I before stated, I have no recollection of having any conversation with Mr. Connor about that matter.

Q. Did you have a conversation with Mr. H. Merrill on this subject?

A. I have no recollection of ever having had a conversation with Mr. Merrill upon that subject at all.

Q. Did you have a conversation with Mr. Connor in reference to that matter when Mr. Merrill was present?

A. As I stated before, I have no recollection of ever having had any conversation with Mr. Connor about that (Record, 277).

* * * * * *

Q. Was Mr. Connor mistaken in his testimony in reference to the conversation had with him about the mortgage of William Crawford being cancelled?

A. As I before stated, I have no recollection of having such a conversation with Mr. Connor.

Q. If you did make that statement to Mr. Connor, was it true or false?

A. That mortgage that William Crawford held on that property there had no payments been made on it; there was no endorsements on the notes or any settlement respecting them until the time the other notes was given in lieu of them, and it was cancelled.

Q. Now, will you please answer the question?

A. I will say that the same question has been asked me several times before by the counsel during the cross-examination. I think I have. (Record, 285.)

In view of the fact that the statement of the witness, Connor, both in regard to the *time* when the alleged conversation took place, and the character of the conversation, and in view of the further fact that the cashier, Merrill, was never called as a witness by plaintiff to corroborate Connor, as it was intimated in the cross-examination of Foster he could, the testimony of Mr. Connor on this subject can hardly be entitled to much weight.

The next reliance of plaintiff for the purpose of breaking down this transaction and fastening the charge of willful and deliberate perjury on the three defendants in this case, is the testimony of Mr. Thomas Monteith (Record, 180), and the portions upon which plaintiff's counsel relies are quoted in his brief (p. 11), in which it is stated that Mr. Monteith answered in response to the question, "was there anything more said in that conversation," as follows:

A. Well, as I said, I believe he stated (that is, John A. Crawford) that Foster seemed to be getting along and making money. "Well," I said, "if he is getting along so fast, why don't he pay off the mortgage that has been on record there ever since he bought the mill." "Why," he said, "that mortgage was paid off long ago."

In the first place, it appears from the testimony that this witness, Thomas Monteith, was a rival in the milling business of Foster and the Crawfords. Reference to his testimony in full will show that the alleged conversations he refers to were of the most casual character and really amount to nothing. He states he had two conversations with John A. Crawford—one the latter part of 1883 and the other about twelve months before his testimony was given.

In addition to all this it appears from the testimony (Record, 322) that John A. Crawford had endorsed a $12,000 note for Thomas Monteith & Son and had to pay $8,400 of the principal together with the interest amounting to several thousand dollars.

Mr. John A. Crawford in his testimony in response to the testimony of Thomas Monteith says (Record, 322):

A. I endorsed a $12,000 note for Thomas Monteith & Son, and I had to pay $8,400 principal and I could not say how much interest. It amounted to some thousand dollars interest. I don't know how much.

Q. Was that Monteith note in the bank at the time of Foster's failure, and were you held for it?

A. I was.

Q. And is that the Montieth that testified in this case?

A. That is the same Montieth.

Q. He testifies that you said that if he had transferred his property at or about that time to you you would have brought him out all right, as you were doing with Foster, or words to that effect. What do you know about that conversation?

A. Well, I don't know anything at all about it that I can recollect.

Q. Did you have any such conversation?

A. Well, I don't think I did, for I was wanting nothing and had nothing to do with his property.

Q. Is it not true that Thomas Monteith gave you a second mortgage upon all of his property to secure you

for the payment of this $8,000 that you had to pay the Bank of British Columbia?

A. He did.

Q. Was not that mortgage foreclosed at the time the first mortgage was foreclosed, and for how much did the property sell?

A. I was not at the sale; I don't know the amount; it sold for the amount of the first mortgage and no more.

Q. Were you willing to take Mr. Monteith's property for the amount of the first mortgage?

A. It was offered to me and I would not accept it.

Q. For the amount of the first mortgage?

A. Yes.

Q. Mr. Monteith also testifies that about two years ago he had a conversation with you, in which you told him that the mortgage given by Foster to your brother was paid off long ago.

A. I have no recollection of such a conversation.

Q. As a matter of fact, was not that mortgage cancelled of record about two years ago?

A. I believe it was.

Q. And Foster's property released from the effects of the mortgage?

A. I believe it was about two years ago or prior to that the mortgage was released and cancelled.

Q. You may state whether or not Mr. Monteith is on good terms with you.

A. Well, he is not on very good terms. He told me that I was one of a syndicate up at Corvallis that wanted to rob him of his property, and that he would sell every drop of his blood, of his heart's blood, but he would have satisfaction.

Q. When was it that he told you that?

A. It was along here this last fall, after the sale of that property of his nephew, Duncan Monteith, to the O. P. Col. Hogg bought it.

The next witness relied upon by plaintiff's counsel is Mr. Thomas I. Anderson (record, 121) and cited in the brief of counsel for plaintiff, at least so much of it as is relied upon (p. 12), namely:

I asked him if he had anything to do with that mill

now, and he told me, "Oh, that is all settled; I have nothing more to do with that mill than you have." (Record, 125.)

By referring to the testimony in full of Thomas I. Anderson (record, 121–129, inclusive), the real *animus* of this witness will be disclosed and the testimony, when taken as a whole, certainly is void of any real influence one way or the other on the merits of this case.

The foregoing is the testimony and the *whole* of the testimony, aside from the fact that on September 17, 1881, William Crawford made oath before the assessor of Linn County in writing that the notes owned by him and liable to taxation in the State amounted in full to only $5,000, relied upon by counsel for plaintiff to overthrow the *bona fides* of the transaction between James H. Foster and William Crawford on the 6th of February, 1884. No more flimsy and unreal testimony, it is respectfully submitted, was ever heretofore earnestly urged before any court for the purpose of overthrowing the *positive sworn statements of three men.*

And who are the three men whose testimony is thus sought to be set aside?

It appears from the record that they have been citizens, not only of Oregon, but of Albany, where these transactions occurred, for a period of nearly half a century, and although attacks are made on all three of them by counsel in his brief based on certain isolated facts and *alleged* facts in connection with this particular case, yet why is it, if these men are so unworthy of belief that their reputation for truth and veracity in the vicinity where they have so long resided and done business were not attacked in the proper way? No person knew better than the counsel for plaintiff in this case the utter folly of attempting to call a single witness within the limits

of the State of Oregon to testify in opposition to the good reputation for truth and veracity of each and all of these men. No such attempt was made. No such attempt could have succeeded for one moment had it been made.

What are the grounds for the somewhat virulent attack in the brief of counsel on the characters of James H. Foster and John A. Crawford? So far as disclosed by this record there is not a particle of evidence to justify an attack upon the reputation for truth and veracity of James H. Foster, nor is there anything to justify an attack upon his integrity in any respect. The only excuse that might be offered for such an attack is the fact that he was at the date of the transfers short of wheat some 20,000 bushels, and was in danger at that time of prosecution on account thereof; but when we investigate the testimony as to just how this state of things came about, it is perfectly clear that Mr. Foster, so far from being guilty of any deliberate attempt to use up more wheat than he was entitled to, was simply the victim of a *mistake* which grew out of the simple fact that owing to a change in the construction of his mill and also a change in the character of the wheat of that year from wheat of former years in its capacity to produce flour.

Mr. Foster upon this point testifies as follows:

Q. Was that—that was the first time that you were ever short in wheat, was it not?

A. I could not say as to that. I have not kept a strict account.

Q. And it was brought around by your having made a change in your mill to the roller process?

A. I used more wheat to make a barrel of flour that season than we had ever been accustomed to take for to make a barrel of flour before. What was the particular cause for taking so much I can't positively say.

Q. You attributed it to that cause, I believe, did not you?

A. I attributed it to the cause that the miller had not

taken all of the flour out of the wheat that he should have done; but afterward, in conversation with other millers—with Mr. Sibson and Mr. Church, men that had had large amounts of wheat floured—they informed me that their millers had taken more wheat that season to make a barrel of flour than they had done heretofore. They attributed it to there not being so much flour in the wheat as had been in former seasons.

Q. How much did it take that year to make a barrel of flour more than before, according to your estimate?

A. According to my estimate it took over thirty pounds.

Q. How much over thirty pounds?

A. I never tried to remember it. I know it took some over thirty pounds.

* * * * * * *

Q. If you lost on a barrel of flour about thirty pounds, and your estimate as the amount that had been used more than you usually used in manufacturing flour was that amount and the amount you were short was 20,000 bushels, the number of barrels of flour that you manufactured would be somewhere in the neighborhood of 40,000 barrels, would it not?

A. I suppose if the loss was thirty pounds of flour or of wheat to the barrel on 40,000 barrels of flour that it would make 20,000 bushels.

Q. Is that the way you estimate your loss so as to ascertain the number of bushels of wheat that you were short for which Mr. Crawford agreed to stand good for?

A. I found, as I said before, that I was short according to my estimate 20,000 bushels, which was much more than what I expected, and I attributed it to the miller taking too much wheat to make a barrel of flour, and I did not know how much had been lost in that way. Then, I suppose now, that I had ground more wheat than I had bought.

Q. When did you come to that conclusion that you had ground more wheat than you had bought?

A. I did at the time that I made the estimate and found that I had certainly ground more wheat than I had bought. (Record, 241–243.)

From this and other testimony in the case it is evident the shortage grew out of a *mistake* rather than any attempt to swindle anybody on the part of Mr. Foster, and the great anxiety manifested by him as appears from all the testimony in this case, to provide for the farmers to whom he was thus indebted by securing them in some way, and the fact that he *did* secure them through a transfer of his property as stated, are convincing proofs as to the character of the man. But, says counsel in his brief (page 54), "Mr. Crawford's personal character is not truthful." And there is some talk about an indictment against Mr. Crawford on account of some alleged untruthful statements made by him to certain members of the grand jury, and the impression is sought to be made that Mr. John A. Crawford is a disreputable character. But the record fails to show that Mr. John A. Crawford was ever indicted for any offense whatever. The record does show that some *attempt* was made by certain parties to secure an indictment against him on account of the sworn statement made to the county officials as to the notes he had subject to taxation, but this effort failed.

The explanation made by John A. Crawford as to why he did not include the Foster notes in the statement of notes subject to taxation is perfectly clear and it seems it should be entirely satisfactory. These notes were omitted for the reason there was an understanding between him and Foster that Foster would deduct the amount of the debt from his indebtedness, and thus Foster, the debtor, would pay the taxes, and did pay them on the amount of the notes, and therefore Crawford was justified in omitting these notes from the list of his notes subject to taxation; otherwise this identical property would have been subjected to *double* taxation. And it is on these flimsy pretexts these attempts, every one of which failed to involve Crawford in trouble in connection with his taxable property, that counsel would now impress upon

the court this belief that John A. Crawford is lacking in personal integrity.

THE COURT BELOW INFERENTIALLY TESTIFIES TO THE HIGH CHARACTER OF DEFENDANTS.

But I do not rest my estimate as to the good standing and high character of the defendants, John A. and William Crawford and James H. Foster, on the mere failure of counsel to introduce evidence tending to impeach their reputations for truth and veracity. Judge Deady, before whom this cause in all its different phases was tried in the court below, bears testimony in this record on that question. In his opinion denying defendants' motion to remand this case to the State court, it having been removed there under the local prejudice clause, he said:

"Neither is it unreasonable that in a case like this, where a stranger from another State is seeking to set aside conveyances made in favor of *local creditors of long standing and high character in the community*, by a failing debtor *of like standing and character*, that there should be prejudice and local influence, not against the plaintiff personally, but against his cause and in favor of his adversaries." (Judge Deady's opinion, record, 48.)

And further:

"The prejudice and local influence mentioned in the statute is not merely a prejudice or influence primarily existing against the party seeking a removal; it includes as well that prejudice in favor of his adversary which may arise from the fact that *he is long resident and favorably known in the community.*"

The above indicated very clearly the estimate evidently held by Judge Deady of Mr. James H. Foster, the debtor, and the Crawfords, his creditors; and the fact that Judge Deady has been a resident of Oregon for nearly half a century and has filled the position of United States District Judge for thirty-two years, and

knows personally every old pioneer in that State, all combine to give weight to his suggestions.

THE COURT BELOW WAS EVIDENTLY IN DOUBT.

The court below in speaking of the failure of Crawford to include the Foster notes in his statement of property liable to taxation (opinion, record 94), says:

> But Crawford may have believed that the Foster notes held by him under the agreement stated were not liable to taxation *eo nomine*, because a tax on the value of the same was being paid by the debtor as a condition of the credit. And therefore while the failure of Crawford to return these notes for taxation is some evidence that they did not then exist as a legal obligation against Foster—a living credit subject to taxation—it is neither conclusive nor cogent on that point.

And because, forsooth, that when under oath he responded to a question to the effect that if people were trying to find out his private affairs, he would give them an evasive answer, we are told by counsel that his personal character for truth is not good and that he had testified that "he would not hesitate to lie to people if they questioned him about business he did not wish to disclose" (counsel's brief, page 54).

It will be noted in this case the plaintiff has not personally verified any of the pleadings, while the replication to the answer of defendant is not verified either by plaintiff, his counsel, or any one else (record, 33).

Every point upon which plaintiff's counsel relies to overthrow the *bona fides* of this transaction is susceptible of the clearest and most satisfactory explanation. It is evident from all the testimony taken together that one principal object in taking up the five notes by the execution of the six new ones was to avoid *double* taxation

and to relieve the Crawfords from paying interest on the ten thousand-dollar notes secured by mortgage under the Oregon mortgage tax law. While such an arrangement might not have been necessary in order to effect that object, inasmuch as Foster was already paying the tax, still this fact can not in any manner affect the *bona fides* of the transaction itself, and even prior to that date, in 1881, William Crawford, at the time he made oath before the assessor of Linn County, was evidently under the impression that as Foster was paying the taxes on the notes he held against him, therefore these ten thousand-dollar notes were *not* properly taxable to him and for this reason they were not included in his statement of taxable notes.

THE COURT BELOW WAS EVIDENTLY NOT ENTIRELY SATISFIED WITH HIS CONCLUSION AS TO THE CHARACTER OF THIS TRANSACTION.

The court below, while holding on the testimony just quoted that these five notes originally given for the purchase of the mill property had been paid and that the conveyance from Foster to William Crawford for the Albany property, February 6, 1884, was voluntary and without consideration, was himself evidently in great doubt, and after reciting the evidence of the two Crawfords, and of the defendant, James H. Foster, in regard to the matter, makes this remark:

"This is an *improbable* statement in all its essential features, *though it may be true.*" (Opinion, record, 95.)

Then the court, after taking up what is termed by the court the "improbabilities" of the case and after reciting the different items of evidence hereinbefore quoted, supposed to be contradictory of the position assumed by and sworn to by the three defendants, makes this remark:

"And yet it may be that these notes were existing obligations between the parties thereto on February 6, 1884, and that all the acts and declarations of the Crawfords to the contrary are falsehoods and pretenses, spoken and acted for the selfish purpose of avoiding the payment of the taxes thereon; but, if so, they have been ensnared in their own net and can not complain that the court has taken them at their own word." (Opinion, record, 95.)

In other words, may it please the court, even though these parties have sworn to the *precise truth;* even though these notes were existing obligations between the parties thereto, on February 6, 1884, yet, inasmuch as it maybe properly inferred from the testimony that some *prior* acts and declarations of the parties were for the selfish purpose of at the time avoiding the payment of certain taxes on the property in question, that therefore the whole transaction from beginning to end, in so far as the conveyance of the 6th of February, 1884, is concerned, must be stamped as having been made without any consideration whatever to support it, as having been conceived and executed in a desire to hinder, delay, and defraud creditors, and not only so, but that these three defendants, old Oregon pioneers, must be branded as having been guilty of *willful and deliberate perjury.*

In Peters *v.* Bain, 133 U. S., 609 this court, opinion by the chief justice, said:

"It is earnestly argued, however, that the deed should be set aside because fraudulent in fact. We have patiently, but without success, examined this record in the effort to discover what specific acts are made out by the proofs establishing, in connection with the deed itself, actual fraud in its execution. The inquiry is *not* whether the grantors *had been previously guilty of fraud or embezzlement,* but whether *this particular conveyance* was made with a fraudulent intent, known to the trustees or beneficiaries (Evan *v.* Greenhow, 15 Grat., 153; Emerson *v.* Sentre, 108 U. S., 1)."

Assuming for the sake of argument, and only for such purpose, because it is respectfully insisted there is nothing in the record in this case from beginning to end to justify the conclusion that there was any attempt upon the part of any of the parties defendant to avoid just and proper taxation, but only by what they did to avoid *double* taxation, that they and each of them did willfully attempt to violate the law on the subject of taxation of notes and mortgages, yet it is respectfully submitted that such acts on their part *can not* and *ought not* to have in and of themselves, except in so far as they may tend to impeach the *bona fides* of the transaction in connection with other testimony, any material weight whatever.

IMMEDIATE POSSESSION OF THE PROPERTY CONVEYED BY FOSTER TO WILLIAM CRAWFORD WAS TRANSFERRED BY THE FORMER TO THE LATTER.

While it is claimed by counsel that Foster remained in possession of some at least of the property conveyed to *John* A. Crawford, no such claim is made, as I understand it, so far as the property transferred to *William* Crawford is concerned. Mr. James H. Foster in his testimony (record, 219) on this point says:

Q. State what you did in reference to the property sold to William Crawford towards turning it over to him.

A. I turned that right over. I had nothing more to do with it.

Q. The property was rented, was it not?

A. All of it rented.

Q. The property was stores and law offices and a hall, was it not? Did you have anything to do about collecting the rents or receiving the rents from that property?

A. After I sold that property to Mr. Crawford I had nothing more to do with collecting rents. I looked after the property in no way, shape, or manner.

Therefore no badge of fraud or collusion between the parties is to be found in this transaction, which sometimes is made evident in connection with other circumstances by the retention of possession upon the part of the alleged vendor.

WHAT WAS THE PROBABLE VALUE OF THE BRICK PROPERTY CONVEYED TO WILLIAM CRAWFORD FEBRUARY 6, 1864, AND WHAT WAS THE CONSIDERATION?

The master found that the parties to the respective transfers at the time they were made in fixing prices upon the different tracts placed $25,000 on tract 6—the tract conveyed to William (record, 54). The master found, however, as a fact in the case, that that tract was actually worth but $18,000. The defendant, John A. Crawford, testifies that in his opinion that tract was at the time of the transfer (February 6, 1884) of the reasonable value of about $20,000.

"Q. That brick block that was deeded to your brother—what was that worth at that time, February 6, 1884?
"A. I could not say. I think at that time the brick block was worth about $20,000. (Record, 317.)"

While William Crawford places the value at about $25,000.

E. J. Lanning, a witness, testifies as follows in regard to the value in February, 1884. Also in 1886, after Crawford had, as testified by him (record, 317), and as found by the master (record, 56), and as found by the court below (record, 90), expended over $2,000 in improvements thereon:

Q. Are you acquainted with the brick block known as Foster's block?
A. I know where it is; yes. I have been through it, I guess all parts of it, pretty much every room in it.
Q. Were you acquainted with it in February, 1884?

A. Well, yes.

Q. What was it worth at that time?

A. I should judge it was worth $14,000 or $15,000.

Q. Is that the block that you understood that Foster deeded to William Crawford?

A. I understood that it was deeded, just heard it in a kind of a way, that is all.

Q. That is the block you have referred to?

A. Yes, sir.

Q. What is that worth at the present time? (December 28, 1886.)

A. It may be worth $20,000. (Record, 405.)

These are the different estimates as to the value of this property by the different witnesses.

The six notes surrendered as the consideration for the transfer of this property to William amounted to something over $16,400. These were notes, it will be remembered, due from J. H. Foster and Co. to William Crawford. If, as claimed by defendants, these notes were genuine and unpaid, this much was paid directly by William Crawford to James H. Foster in the equivalent of cash, and the difference between this amount and the value of the property as estimated by him was made up, according to his testimony, of $6,000—moneys that his brother and agent, John A. Crawford, was owing him and which he had been owing him the most of the time since the date when they sold the mill property to the Fosters in 1867. (See testimony of William Crawford, record, 419, 420, as follows):

Q. The consideration named in the deed to the brick store was $25,000, and the amount of these six notes marked Ex. 6, is 16,400. Did you pay your brother the difference between the notes and the consideration named in the deed?

A. At the time the mill was sold (meaning in 1867) my brother got $6,000 in money and notes. I told him to put it away in the safe. He didn't give me any account of that money and he had the $6,000. * * *

He hasn't owed me the $6,000 ever since 1867. He loaned the Odd Fellows $5,000 and took the note in my name. When the Odd Fellows paid it they paid it to him, John, and John used it. I didn't get it. John had more than enough to make out from the $16,400 to the $25,000. These six notes, Ex. 6, are worth more than the house now, if they could be collected. I am not the owner now of these six notes, Ex 6. I was, but they were given to Foster for the brick.

There are several facts in connection with this transaction bearing upon its *bona fides* that can not be controverted, and which go far to stamp it as in all respects *bona fide*. The first is that the five notes (Exhibit 6) were executed in good faith by the Fosters in 1867 for $10,000 as part consideration for the mill they purchased of the Crawfords, the balance of the purchase-money, $6,000, having been paid to John A. Crawford in cash, this undoubtedly being the same $6,000 referred to by William Crawford in his testimony as having been received by his brother John and used by him. All this is conceded by counsel. Another fact that can not be controverted is this: Whatever may have been the motive for the transaction, long prior to any of these transactions, at a time when James H. Foster was regarded as solvent, these five notes were cancelled by the execution and delivery by James H. Foster & Co. to William Crawford of the six notes referred to in Exhibit 7.

Another fact is incontrovertible. Both these series of notes were in existence, produced and presented as evidence, admitted as such, and are a part of this record. (Record, 526–528.)

Now, what is the contention of counsel? Not that these notes are not genuine notes, duly executed by the parties at the time and in the manner as claimed, but the contention is simply this: that these notes have been paid, or had been paid prior to February 6, 1884,

and having been paid, that therefore they could not constitute a valid consideration for the transfer of the Albany property to William Crawford. But upon what evidence can it be insisted that these original notes were paid? Not one scintilla of evidence of any character, except some alleged loose statements as hereinbefore stated of the parties to that effect in response to impertinent inquiries of busy-bodies who were evidently seeking to inquire into the private business affairs of their neighbors. If they were paid, *when* were they paid? *How* were they paid? *Who* paid them? Both Foster and the two Crawfords swear positively they were *not* paid but were then existing valid obligations. The burden of proof is upon the appellee, Neal, the plaintiff in the case in the court below, to show that these notes had been paid, and that, therefore, they did not constitute a valid consideration. The burden of proof is on him to overcome the presumption of *bona fides* that attaches to every business transaction, and especially to transactions involving the transfer of title to real estate. This presumption, the more especially when the transaction is sustained by the positive, direct testimony of three witnesses, although they may be parties to the record, can not be overcome by evidence of mere transitory admissions or statements made by parties not under oath.

The court below, in support of his theory as to the *probability* that these notes were paid *some time, when* or *where* or *how* is not stated, cites the fact that between 1867, when Foster purchased the mill property from William Crawford, giving as part consideration the five notes (Ex. 6; record, 527), and February, 1884, Foster had expended $40,000 on the mill property in repairs and improvements; had also built the brick block in question at a cost probably of $12,000. And the court concludes: "To my mind it is quite *improbable* that a person with

this amount of money at his disposal would allow a mortgage to secure a debt of $10,000 to remain on his mill for seventeen years," &c. True, this may seem to some minds *improbable*, but, as we shall see later on, conveyances are not to be brought within the denunciations of the statutes of frauds and perjuries merely because the transaction leading up to their execution may seem to be "*improbable*." Nothing but *proofs*, either *positive* or of circumstances of the strongest character, are sufficient, especially when the question upon which the case turns is one of consideration merely, and that is sustained by the positive testimony of three witnesses.

Again, the relations of these parties, debtor and creditors to each other, should not be lost sight of. The Crawfords were not doing a banking business. All the parties as shown by the record were neighbors and friends. The Crawfords were men of means, and from time to time, as shown by this record, were advancing means to their friend Foster, carrying him financially at all times and in all directions; and so long as they saw Foster prosperous, improving his mill property, making it more valuable, building a brick block for rent, building up the city in which all three were interested, and adding to his abilities, as the Crawfords had a right to suppose, to finally pay all his indebtedness, it is after all not so improbable that the Crawfords, being in no need of money, would do precisely as they did do, give Foster all the time he desired.

The remarks of the court below in sustaining the *bona fides* of the conveyances from Foster to *John A.* Crawford (opinion, record, 93) are equally applicable in response to the contention of counsel that the six notes surrendered as the consideration for the conveyance to *William* Crawford, had been paid. The court said:

"The contention of the plaintiff is that, admitting their genuineness, they were paid some time, but he can not

say when, before the transfer of the property, when they were fraudulently revived for the purpose of being made a part of the consideration of such transfer.

"*Both Crawford and Foster swear positively that the notes were due and unpaid*" (so do they both swear positively that the six notes surrendered by William Crawford were due and unpaid) "according to their face at the time of the transfers, and that they constituted a part of the consideration thereof, and there is no direct evidence to the contrary. But there are *some* circumstances in the case which contradict them with more or less force. It is very unusual that notes of this amount, $16,930, are allowed by business men to go unpaid and unsecured for a period of twelve years, and that without the payment of interest for the last two-thirds of the time; still the matter is not so impossible as to prevent belief when supported by the direct evidence of the parties." (Opinion, record, 93.)

All the foregoing, so well said, is in every sense applicable to the transactions between Foster and *William* Crawford. And it is respectfully insisted that the conclusion reached by the court below in the case of *William* Crawford is wholly inconsistent with the views, expressions, and conclusions of the court in the case of *John* Crawford. The *two* conclusions of the court below, it is respectfully insisted, are in the nature of a compromise between the parties to this suit justified by neither facts nor law.

Conclusion.

In conclusion it is respectfully submitted that the conveyance to William Crawford of tract No. 6, being the Albany brick property, on February 6, 1884, was made in good faith, supported by a valid and adequate consideration, and was not made with any intent either to delay, defraud, or hinder creditors, but, on the contrary, was made to secure a creditor who had indulged him for years and been to him a devoted personal and business

friend. We confidently submit the proposition as applicable to the Williams transfer is pertinently stated by the court below in speaking of the transactions between Foster and John A. Crawford:

"If the purchase was made in good faith—that is, for the purpose of providing for the payment of the debts due the purchaser * * * and not merely to hinder, delay, and defraud creditors—the conveyance is not within the statute of frauds and is valid. The amount and character of the consideration is not material except as it may affect the question of good faith. Bump, F. C., 207." (Record, 91.)

It is respectfully submitted that neither the amount nor character of this consideration, as disclosed by the evidence, nor any other matter or thing connected with it, in any material degree tends to prove much less proves that the purchase was not made in entire good faith, or that it was made with an *intent* to hinder, delay, or defraud creditors, and hence the decree of the court below setting aside the conveyance to William Crawford should be reversed.

It is respectfully submitted that it is clear from the testimony in this case that the conveyance to William Crawford for tract numbered *six* was made in *good* faith, supported by a good and adequate consideration, and was not made or intended to hinder, delay, or defraud creditors.

Some legal propositions applicable and proper to be considered in connection with all these transfers will be submitted further on in this brief.

The Appeal of Plaintiff Neal.

THE CONVEYANCES OF FEBRUARY 6, 1884, FROM J. H. FOSTER AND WIFE TO JOHN A. CRAWFORD WERE EXECUTED IN GOOD FAITH, FOR ADEQUATE CONSIDERATION AND WITHOUT ANY INTENT TO HINDER, DELAY, OR DEFRAUD CREDITORS.

Were the conveyances from J. H. Foster and wife to John A. Crawford, of date February 6, 1884, supported by a good and adequate consideration? Were they made in good faith and without any intent to hinder, delay, or defraud creditors? Both the master and the court below held that they were. These conveyances included tracts numbered from 1 to 5, inclusive, as described in the complaint.

In this connection the claim of the appellee, John A. Crawford, the findings of the master and the court below, respectively, and the present contention of counsel for plaintiff Neal, appellant, will be considered, compared, and such proper weight given to each as the evidence seems to warrant.

THE CLAIM OF JOHN A. CRAWFORD AS SUPPORTED BY THE POSITIVE TESTIMONY OF JAMES H. FOSTER AND HIMSELF, AND CORROBORATED BY THE TESTIMONY OF R. S. STRAHAN, JOHN MCCRAKEN, ISAAC BEAM, AND OTHERS.

The claim of John A. Crawford and J. H. Foster in this regard will be found in their answer to the original bill (record, 21), and covers the whole consideration passing from John A. Crawford for the five tracts, and from William Crawford for tract No. 6. This claim is to the effect that about the sum of $64,000 was paid and to be paid, and which subsequently was paid, by said John A. Crawford to said defendant, J. H. Foster. The consider-

ation passing from John A. Crawford to J. H. Foster for the five tracts was made up of the following items, according to their answer:

1. John A. Crawford was to pay, and did subsequently pay, a note of $5,000 to the Bank of British Columbia, in Portland, Oregon, which defendant, Foster, then owed, and upon which John A. Crawford was security.

2. By agreeing to pay, and subsequently paying, a note of $5,000 to the First National Bank of Albany, Oregon, which defendant, J. H. Foster, then owed and upon which said John A. Crawford was security.

3. By agreeing to pay, and subsequently paying, $1,000 on a note which defendant, J. H. Foster, then owed to John Connor, of Albany, Oregon, and upon which said John A. Crawford was security.

4. By agreeing to pay, and subsequently paying, a note of about $4,900 which defendant, J. H. Foster, then owed to Frank Paxton, and upon which said John A. Crawford was security.

5. By surrendering up, as paid and cancelled, three several promissory notes upon which there was then owing from the defendant, J. H. Foster, to the defendant, John A. Crawford, the aggregate sum of $26,520.

6. By surrendering up, as paid and satisfied, an account of $5,803 then due and owing from defendant, J. H. Foster, to the defendant, John A. Crawford.

That all of the above amounts were paid by said John A. Crawford soon after February 6, 1884, the date of the conveyance from Foster to him for the five tracts specified in the complaint.

7. In addition to the above, it is claimed that John A.

Crawford agreed to furnish 20,000 bushels of wheat to various persons who held warehouse receipts for wheat against defendant, J. H. Foster, under the name and description of J. H. Foster & Co., or otherwise to pay for the same and take said Foster's place and assume all his liability in regard to said wheat and said warehouse receipts, which Foster had given for wheat as aforesaid, and which had not been redeemed or purchased by him; and as security that Crawford would do this he at the date of the execution of the conveyances executed a note to J. H. Foster for the sum of $10,000, and which subsequently passed into the hands of one Dr. Gray, and which was to be returned to Crawford, cancelled, upon his compliance with the contract in regard to the wheat and certificates. This contract, it is claimed, John A. Crawford complied with and the note was subsequently returned to him as per the agreement.

The Findings of the Master.

The master and the court below found—

That the real property conveyed to John A. Crawford was at the date of the conveyances, February 6, 1884, reasonably worth $36,000; that the accounts and grain sacks sold to him were worth $6,000—total $42,000. The master found, contra, that at the date of said conveyances, February 6, 1884, Foster owed John A. Crawford on existing notes and accounts the sum of $27,733.50.

2. That John A. Crawford was, as surety for said James H. Foster, then liable to pay about $16,000, and all of which the master finds John A. Crawford subsequently paid. The referee further found that John A. Crawford also made good to sundry persons a deficiency of wheat in the mill warehouse for the benefit of James H. Foster of near 20,000 bushels, and which cost him (Crawford)

near $10,000 more cash, making a total, according to the findings of the master, which John A. Crawford paid for the five tracts, the sum in cash of $53,733.50, or about $11,733.50 more than the property received—namely, the five tracts—was worth at the time according to the findings of the master. (Record, 90.)

Findings of the Court Below.

The court below finds that at the date of the conveyance to John A. Crawford, February 6, 1884 (see opinion, record, 91), as follows:

"There is no room to doubt that John A. Crawford was then liable as surety on Foster's paper for $15,900, namely:

To the Bank of British Columbia.....	$5,000
To John Connor and the Bank of Albany.....	6,000
And to Frank Paxton.....	4,900
Making a total as above of.....	$15,900"

The court further finds that subsequent to the date of February 6, 1884, John A. Crawford as such surety paid all these amounts as part of the consideration of the transfer.

The court further finds as follows:

"Neither is their any room to doubt that Crawford settled with the farmers and others holding Foster's wheat receipts for 19,541 bushels of wheat that the latter had used; but the amount disbursed for this purpose is not certain. * * * It is altogether probable that from $10,000 to $15,000 was paid out for Foster on this score—say $12,500. This added to the amount paid by Crawford as surety or indorser, makes $28,310 paid on the property in cash." (Opinion, record, 91.)

The court further finds that the claim of John A. Crawford on an open account for $5,803 is a probable one.

The court further finds that this sum of $34,113 in cash paid on the five tracts by John A. Crawford "is more than it would have probably sold for at sheriff's sale, and more than three-fourths of the value that the master places on it, which in my judgment, $42,000 is its full market value." (Opinion, record, 92, 93.)

But the court further finds as follows:

"That while the evidence as to whether Crawford also turned in Foster's three notes in part payment of this property is conflicting, *I think the weight of it is he did.*" (Opinion, record, 92–93.)

THE CONTENTION OF COUNSEL FOR PLAINTIFF, APPELLANT.

The original claim when the bill was filed was that all the conveyances to John A. Crawford, William Crawford, and Ashby Pearce, covering the *seven* tracts described in the complaint, were fraudulent and void, without consideration, and made with the intent to hinder, delay, and defraud creditors. This claim, however, has gradually, step by step, been abandoned until to-day, in so far as it relates to the conveyance to John A. Crawford, it is limited solely to the claim that John A. Crawford did not pay *all* he *claims to have paid* and which the master and court below find he *did pay* for the property included in the five tracts deeded to him, the claim, however, still being that this transaction was intended to hinder, delay, and defraud creditors.

First, on the trial of the case in the court below plaintiff's counsel abandoned the claim totally that the conveyance to Ashby Pearce of tract No. 7 was not in good faith, and now counsel in his brief not only concedes this but also concedes that John A. Crawford *did pay* as a part consideration, at least, for the five tracts conveyed to him, a five-thousand dollar note of James H. Foster, due then to the Bank of British Columbia, in Portland,

Oregon, and on which he, Crawford, was Foster's surety. See brief of counsel for Neal, page 2, in which counsel says:

"In the beginning of the case it was also a part of our theory that the indebtedness to Ashby Pearce and the indebtedness to the Bank of British Columbia upon the joint note of Foster and Crawford were liquidated by Foster's own money and not by Pearce and Crawford individually. But we desire to be entirely candid with the court and to give it no more labor than is necessary; so we will say that we ourselves do not believe that we have successfully established this portion of our theory and we shall consider the case upon the assumption that Pearce himself paid the note due at Connor's Bank, in Albany, and that Crawford paid the note due to the Bank of British Columbia in Portland."

A careful analysis of the testimony in this case will clearly demonstrate the fact that every other claim made by counsel in this case is equally without support in the record and must be abandoned.

Counsel, in his brief, after conceding that John A. Crawford paid the $5,000 note to the Bank of British Columbia, takes upon himself the responsibility of attempting to convince this court from the record as follows:

1. That John A. Crawford did not redeem warehouse wheat receipts as claimed.

2. That he did not pay for Foster to the Bank of Albany $5,000.

3. That he did not pay John Connor $1,000.

4. That he did not pay Frank Paxton $4,900.

5. That he did not surrender three notes aggregating $26,550, and

6. That he did not surrender an open account of $5,803.

Let us inquire in their order as to the grounds upon which counsel insist that the positive evidence of the parties to these transactions must be overthrown.

But first, as to the sworn statements of both John A. Crawford and James H. Foster in reference to these disputed matters.

THE TESTIMONY OF JOHN A. CRAWFORD.

Mr. John A. Crawford testifies (record, 309) as follows:

John A. Crawford, one of the defendants, called and sworn in behalf of defendants.

Questioned by Flinn:

Q. State your name, age, residence, and occupation.

A. John A. Crawford; aged about 71; residence, Albany, Linn County, Oregon; occupation, miller.

Q. You may state what you know about purchasing the Magnolia mills and the brick block and the dwelling-house mentioned in the complaint in this suit from James H. Foster on or about February 6th, 1884.

A. Some time prior to the 6th of February I heard that Foster was wanting to borrow money on his unencumbered real estate. I had endorsed for him to a large amount and he was also owing me and my brother a large amount unsecured. I went to him and told him I wished to be secured for what he was owing myself and my brother. He told me that he did want to borrow money and to secure it on his property. He was hard up for money and he would like to borrow, and if I could loan him the money he would give all his property as security or sell it or something to that effect. I told him I did not want to loan money—any more money—nor I did not want to buy real estate. I just merely wanted security for what he was owing me. He then went on to state that if I would he would give me security on his real estate. He did not think that he could borrow from any other person on a second mortgage, and he wished me to let him have more

money or he could not transact any more business. I told him that I did not want to loan any money, and he said that he had a good deal of flour on hand that was unsold, and the farmers was pressing him to buy wheat, and he had no money to pay them for it, and that he had ground and shipped more wheat than he had bought, and that farmers held receipts against him for wheat, and for which he had no wheat to give them nor money to pay for it, and I said that I would study over the matter and let him know. Well, I studied the matter over, and I told him that I thought it was too big a responsibility for me to take all his property and have it on my hands. Then we went to work and figured up what the amount was that I had endorsed and what he was owing me and my brother, and found the amount. I went to my brother and consulted with him as to what he thought it was best to do. He said that I might do just as I had a mind to; that Foster was owing him money, and that he would like to secure his part as well as mine, and that if I thought it was best I might buy it. I studied it over for some time; went to Foster again and told him to look up the amount of property that he wished to sell or secure me by the mortgage, whichever we could agree upon. He made out a list of the property, and put his price on all of it at the lowest figure that he said he would take for it. I then took time for it to study it over and see which way I could serve myself best, and I then concluded that I would buy his property at the figures proposed, and went, and he and I concluded the arrangements and settled that he would sell, and I said that I would buy. We then called on Judge Strahan to make out the deeds.

Q. You may state whether you related your agreement to Judge Strahan and whether he figured up the several items for you in your presence.

A. I think we named the price on each piece of property, the value of everything, and what the agreements were that Foster and I had made.

Q State whether or not the several items constituting the consideration that you were to give Foster for the property were figured up at that time by Judge Strahan or enumerated in his presence.

A. They were.

Q. You may state what the consideration for the property was, if you remember, that you purchased of James H. Foster at that time.

A. I think it was somewhere about $75,000.

Q. You may now state how that consideration was paid or to be paid, as near as you can.

A. That consideration was to have been paid by me paying the notes I had endorsed for to different parties and what he was owing me on individual notes and my brother on the same and some book accounts; also there was about 20,000 bushels of wheat that he was short in his stock there in the warehouse for which there were receipts given by him to the farmers, and I was to relieve him of all responsibility of these warehouse receipts and pay for them and deliver them up to him, which I agreed to do, and I think that was about all of the consideration that he was to get for the property.

Q. State whether or not you were to surrender up and cancel all of the notes which your brother and you held against him at that time as a part of that consideration.

A. That was part of the consideration. I agreed to surrender my notes and the notes held by my brother against him and all of the notes that I had endorsed for him to different parties and the book accounts and the wheat receipts from the farmers, amounting to something like 20,000 bushels. (Record, 309.)

* * * * * * *

(Here note marked "16" is shown to the witness.)

Q. You may state whether you paid that note as part of the purchase price of the property.

A. I surrendered that note as part of the purchase price for the property.

Q. How much did you pay on that note?

A. Well, I could not say exactly.

Q. The full amount?

A. I paid the full amount, with interest, for all the note calls for. The note calls for $4,810, with interest.

Q. Is that your signature?

A. Yes, sir; that is my signature.

Q. Was that not given for your debt or J. H. Foster's?

A. It was for J. H. Foster's, I think.

Q. Don't you know?

A. I do know.

Q. Did you get any consideration for that note?
A. I did not.

(Here notes marked "Exhibits 10, 11, & 12" are shown to witness.)

Q. You may state whether or not those notes were paid at the time you purchased the property of Foster except what is endorsed on them.

A. There was no part of them paid, only what is represented by the endorsements on the back.

Q. You may state whether or not those notes were then owing to you by James H. Foster.

A. They were.

Q. You may state whether you surrendered them up to him as a part of the purchase price of this property.

A. I did.

* * * * * * *

(Here notes marked "Exhibit 9" are shown to witness.)

Q. You may state whether you signed both of those notes.

A. I did.

Q. For whose benefit were they signed?

A. For J. H. Foster & Co.

Q. Who got the money that they were given for?

A. I presume J. H. Foster did.

Q. Did you get any of it or any benefit from it?

A. I did not.

Q. You may state what portion, if any, you paid.

A. I paid $5,000, with interest, on the $5,000 note, and I paid $1,000 on the $6,000 note with a little interest—whatever was due.

Q. Were those notes a part of the notes which you had endorsed for Foster and was to pay for this same property?

A. They are the same notes.

Q. You may state whether you did pay them and surrendered them up to Mr. Foster.

A. I paid them and surrendered them up to him.

Q. You may state what you did towards purchasing the short wheat and relieving Mr. Foster from that liability, how much wheat you purchased, if you know, or gave your receipts for in lieu of Foster's?

A. I purchased and paid for the greater portion of

20,000 bushels. I could not say exactly how much. The balance of it I gave my warehouse receipts for until the parties came and sold it.

Q. After the purchase of the property by you what did you do towards taking possession of the same and managing it, if anything?

A. The next day I went down to the mill and I engaged one of the men there; asked him if he would work for me, as I had bought the mill from Foster and wanted some one to take charge of it. Mr. Beam said that he was discharged by Mr. Foster and would be very glad to stay on in my employ, and he did so and is still there yet. (Record, 311–313.)

* * * * * * *

JAMES H. FOSTER'S TESTIMONY.

* * * * * * *

The defendant, James H. Foster, on this point testifies as follows:

Q. You may now state how Mr. Crawford paid you, or was to pay you, for the property you sold to him about the 6th of February, 1884.

A. He paid me in notes that he held against me—my notes—and he paid notes off that he had endorsed for me to different parties, and he was likewise to purchase and make good to parties who held my receipts for wheat that was in store—something near 20,000 bushels of wheat that I was short in the warehouse; he was to make that amount good to the farmers—either give them his receipts for the wheat or buy the wheat from them; clear me from responsibility for the wheat; and there was an account that he had against me on a certain amount that was to be counted in the sale.

Q. You may state under what name you were then and had been doing business for a number of years prior to that time.

A. The name of J. H. Foster & Co.

Q. Please explain how you came to be short in wheat that year and what you told Mr. Crawford about it at the time of the sale, and as to it being a part of the consideration.

A. The main reason why I came to be short in this wheat was, the miller had taken a large amount more of wheat to make a barrel of flour than we had been accustomed to using before. We had just built the mill over and made it partially a roller mill and part a burr mill, and I had got a new miller, one different from what I had before. We had always calculated to make a barrel of flour out of at least four bushels and a half of wheat, and when we came to make a calculation this time we found that it required about five bushels of wheat to make the flour; therefore we had taken out of the warehouse a large amount more of wheat than I had made a calculation on taking, the warehouse being a large building with deep, dark bins, some thirty-odd feet deep, the wheat being drawn out of it was most impossible for to tell and along not a great while before I made this transfer to Mr. Crawford I went up and in looking the best I could into the bins I thought they looked to be sunk more than they ought to be, and I had the hands to level the bins and measure them, and we then made a calculation of how much wheat we supposed there was on hand, and it fell very far short of what I supposed there was; then I examined particularly and I found that I was very much behind hand in wheat. At this time the price of flour had dropped to some extent. Having this large amount of flour on hand unsold and this large amount of short wheat, when I came to make the calculation there—be near 20,000 bushels of wheat short—I became alarmed and felt the condition I was in. I felt that I must make up that wheat at all hazards, and I heard so much talk about short wheat—I had heard Judge Boise—(objection by Weatherford to anything said by Judge Boise)—*A.* heard farmers—(objection also to what farmers said)—*A.* making such heavy threats on men that would be short with them in wheat. I went first to Mr. Burkhart. He claims to be or is an agent to one of those companies that loan money; told him that I would like to borrow $15,000, and I would give the best of security for it. He said there would be no trouble in me getting it with the security that I proposed to give, and in a few days after he told me the parties in Portland refused to loan any money on property in Albany. Their plea was this: mortgage law was working a hard-

ship on them. I came myself down here to Portland and got Mr. McCraken to try and solicit a loan from the banks or parties here. He first went around by himself and I did not go with him. He said that he could not succeed in procuring a loan by giving a mortgage on property in Albany, it made no odds how good the security was. I went myself then to several banks here. They said they understood there was to be — school-house built in Albany, and that they could not tell the amount of taxes that might be levied on that account, and they did not feel inclined to loan money nor would not in Albany, although they had been informed that the security that I offered was of the very best. I then returned home. I felt then that there was no other show for me without I could get the money from Mr. Crawford, although I had said nothing to him about it. Some days after, not many, he spoke to me; asked me if I was not in a very close place. He understood that I was trying to borrow money. I told him that I was in a very close place, and then went on and told him just how I was situated and how he was, too—how that he was on these certain notes that he had signed to different parties as security for me; and I likewise told him about this short wheat; that that was my greatest trouble just then. He said that he thought I ought to secure him some way. I told him I thought so, too, and I was willing to do so. He first spoke about a mortgage. I told him that the first thing that I could do or would do I must have the money to buy that short wheat with; that I did not feel disposed to place my property if it was in my power to do so from getting that money, because I knew the consequences, and along afterward, I don't know how long, not long, though, I met him again and we talked the matter over, and my recollection is that he said that Strahan thought he had better buy the property. I told him that I would sell him the property, but he must become responsible for that short wheat. He said it would take a good deal of money for that, and he did not know whether he could get the money or not to meet these obligations. He said he would study it over. I told him the price that he might have the property for if he would do that, and he said he would study it over. Afterwards he came to me and said, "I have concluded to take that

property. I will take the chances on it." I then told him that if he did and met this respecting the short wheat, why, he could have it, and he said he would do it; then he said Strahan would make out the deeds; that Mr. Strahan, if I understood it right, that he was sick that day and would not be able to be in his office, and was not really able to go to work to make out the deeds. He was in bed, so I was informed. I sent the old deeds up to the house and Mrs. Foster and me came down to his house in the evening along after dusk. He made out the deeds to Mr. Crawford for the property and we signed them. Mr. Crawford turned over to me the notes that he held against me, and he likewise gave me an obligation—Mr. Strahan wrote it out; it was similar to a note —that he would be security, that he would buy that wheat, and when he bought the wheat, that was to be delivered back to him again. I signed the papers that was gotten up by Mr. Strahan turning the property over to Mr. Crawford, and I think it was the next morning Mr. Strahan came into the office and made out some other papers respecting the books, &c., and Mr. Crawford, some time, not long, afterward took up those notes that he was security on for me and delivered the notes over to me, with the exception of the note to Frank Parton. He said he had taken that up, but he had mislaid it and he could not find it, but he has since found it and given it to me. (Record, 207–210.)

* * * * * * *

Q. You may state what notes Mr. Crawford had endorsed or signed with you that he had paid as a part of the purchase price of his real property.

A. He paid a note to the Bank of British Columbia of $5,000 and delivered that note to me.

Q. Have you that note?

A. I have it; it is here. (Produces it.)

(Here the master is asked to mark the note last above referred to for the purpose of identification, and it is marked "8" in blue.)

Q. Who signed that note?

A. James H. Foster & Co., J. A. Crawford.

Q. Who paid it?

A. I suppose J. A. Crawford; he delivered the note to me.

Q. Did J. H. Foster & Co. pay the note, or any part of it?

A. No, sir.

(Here the note is offered in evidence by defendants, and the master requested to substitute a copy therefor, as the original is in evidence in another case now pending. The note is received, a copy made and marked "Defendants' Exhibit 8.")

Q. What other notes have you that Mr. Crawford paid as a part of the purchase price of that property?

A. Here are two notes which Mr. Crawford paid, made payable to John Conner. One of them payable to John Conner, the other to the First National Bank at Albany, Oregon.

(Here the master is asked to mark the two notes last above named for the purpose of identification, and the notes are attached and marked "9" in blue pencil.

Q. What part, if any, of those notes did Mr. Crawford pay?

A. The note payable to John Conner he paid one thousand dollars on; the note payable to the First National Bank he paid $5,000 on.

Q. Who executed these notes?

A. J. H. Foster & Co. and John A. Crawford.

Q. Who got the money and for whose benefit were they executed?

A. They were executed for the benefit of J. H. Foster & Co.; I received the money, J. H. Foster.

Q. For whose benefit was this note marked Exhibit "8" executed?

A. I got the money on that, too. I, J. H. Foster & Co., got the money on that note.

(Here the two notes last above referred to, attached together and marked in blue "9" are offered in evidence for defendants, and the master requested to substitute copies thereof, with all the endorsements, as the originals are in evidence in a case now pending in the State Circuit Court. Said notes are received, copies made, and marked Defendants' Exhibit "9."

Q. You may state what notes, if any, John A. Crawford owed you or you owed John A. Crawford at the time of the sale of this property to him by you on February 6, 1884.

A. I owed to John A. Crawford a note dated April 28, 1876. It was delivered up to me.

Q. I did not ask you just what notes you owed. You can identify them in a general way, without reading their contents. We don't care for that.

A. Well, I would like to ask a question or two about it, what you require, to give the date or what?

Q. Just give the number or date.

A. There was three notes.

Q. Please state the amount and date of each one.

A. First, the amount of $3,000, dated September 12th, 1878; second, the amount of $8,605, dated April 28th, 1876; and, third, the amount of $5,325, dated April 28th, 1876.

(Here the master is asked to mark the three notes for identification, and they are marked in blue pencil "10, 11, 12," respectively.)

Q. You may examine the note for $3,000, marked "10," and state who signed that note.

A. I signed it, J. H. Foster & Co.

Q. What was the consideration for that note?

A. The consideration was money borrowed, gold coin.

Q. You may state whether you owed that note at the time of this transfer.

A. I owed that note at the time of the transfer.

Q. What payments had you made on that note prior to the transfer?

A. There was not any payments on it.

Q. You may examine the note for $8,600, marked "11," and state who executed that note.

A. I executed that note, J. H. Foster.

Q. What was the consideration for that note?

A. That note was given in lieu of or in place of another note that Mr. Crawford held against James and John Foster. I bought out John Foster, and agreed to take up his note and gave this note in the place of that note.

Q. Was that note given about the time that you bought out John Foster?

A. About that time.

Q. You may state whether or not John Foster and James H. Foster constituted at one time the firm of James H. Foster & Co.

A. They constituted the firm of James H. Foster & Co. from the time we bought the mill from Mr. Crawford until I bought him out in the spring of 1876.

Q. You may state when it was that you purchased the mill from Mr. Crawford.

A. We purchased the mill of Mr. Crawford in 1867.

Q. You may examine the note marked "12" and state who executed that note.

A. I executed that—James H. Foster.

Q. What was the consideration of that note?

A. $5,325 is the amount of it. The consideration of it was other notes, I think.

Q. Well, you may state what other notes, if you remember.

A. One note that was delivered up to me at that time for $3,000, dated July 20, 1875, and one for $2,000.

Q. Have you those notes here? If so, please produce them and have them marked for identification. State the amount of those notes.

A. One was for $3,000 and the other for $2,000 and the interest that was on them?

(The notes are marked, in blue pencil, "13 and 14," respectively.)

Q. Who executed or signed those notes marked "13 and 14?"

A. They were signed by J. H. Foster & Co.

Q. Have you the note or notes for which the note of $8,605, marked "11," was given in lieu of?

A. I have.

Q. Please produce it.

(Here the note is produced and marked in blue pencil, "15.")

Q. Who executed that note, marked "15," for $7,593?

A. J. H. Foster & Co.

Q. At the time exhibits "13, 14, and 15" were executed who composed the firm of J. H. Foster & Co.?

A. James H. Foster and John Foster.

Q. State, if you know, what the consideration was of those three notes, marked "13, 14, and 15."

A. I could not positively say; either wheat or money. It might possibly have been some other notes and calculated into them at the time they were given.

(Here the notes marked "13, 14, & 15" are offered in evidence and the master requested to substitute copies thereof, as the originals are in evidence in a case now pending in the State circuit court. Said notes are received, copies made, and marked "Defendants' Exhibits 13, 14, and 15," respectively.)

Q. You may state whether or not the three notes marked, respectively, "10, 11, & 12," were surrendered up to you as a part of the purchase price of the property you sold to Mr. Crawford on February 6, 1884.

A. These three notes were delivered up to me by Mr. Crawford as a part of the purchase money for the property sold to him at that time.

Q. Had any payments been made on those notes, other than those endorsed thereon now, at the time they were surrendered up to you?

A. No other payments had been made on them besides those now endorsed on the notes.

Q. Did you owe him the full amount thereof except what was endorsed thereon at the time?

A. I owed him the full amount of those notes except what was endorsed on them.

Q. You may state what arrangements was made between you and Mr. Crawford, at the time of the execution of those notes, about the payment of the taxes.

(Objection by Weatherford unless it appears upon the face of the notes, as they show the contract of the parties.)

A. I agreed to pay the taxes on those notes or not take them out of my indebtedness, and I did not.

Q. You did not what?

A. Take them out of my indebtedness.

Q. In giving in your taxes?

A. In giving in my taxes.

Q. Was that part of the consideration in getting the money of Mr. Crawford or of fixing the rate of interest?

A. That was part of the consideration that I gave him when he got the notes?

(Here the notes marked in blue "10, 11, and 12" are offered in evidence and the master requested to substitute copies therefor, as the originals are in evidence in a case now pending in the State Circuit Court. Said notes are received, copies made and marked, respectively, "Defendants' Exhibits 10, 11, and 12.")

Q. You may state now how much wheat Mr. Crawford purchased for you to supply the shortage in your contract of sale with him.

A. According to a statement that I made out, and I think it is correct, there was at that time that I sold to Mr. Crawford wheat in store unaccounted for or ought to have been in store 32,891 bushels. The amount that was in store, as reported to me after it was weighed by the person who weighed it was 13,350 bushels, leaving a shortage of 19,541 bushels. Mr. Crawford relieved me from the responsibility of that wheat, either purchasing it or taking up my receipts and giving his own for it.

Q. Did he as a matter of fact purchase that wheat or give his receipts for it and take up yours for that wheat?

A. I know he purchased a large amount of it, and to some he gave receipts. How it was all transacted—I am not able to explain every transaction of this matter, but I am well satisfied that satisfaction has been given for it, as no party has claimed anything from me for wheat that was in store there.

Q. You may state whether you paid for or delivered any of that 19,000 bushels of wheat to the farmers yourself.

A. I bought none of this wheat on my own account or with my own money, nor delivered any part of it on my own account or for myself.

Q. Did you buy any of it for Mr. Crawford?

A. I think I bought some with his money and for him while I was in his employ. How much I don't remember.

Q. You may state what other notes, if any, Mr. Crawford paid for you besides delivering up to you his own notes and the notes that you gave to William Crawford and the payment of the note to the Bank of British Columbia.

A. He paid the note to Frank Parton.
Q. If you have that note with you please produce it.
A. Here is the note. (Witness produces a note.)

(Here the master is asked to mark the note last above referred to for identification, and it is marked in blue "16.")

Q. Who executed that note just marked?
A. James H. Foster & Co. and John A. Crawford.
Q. For whose benefit was it executed?
A. For the benefit of J. H. Foster.
Q. What was the consideration of that note?
A. The consideration in the first place was money and labor, but that note was given in place of another that was delivered up at the time this was given.
Q. Was Frank Parton your miller for a number of years?
A. He was my miller.
Q. You owed him for money loaned to you and for labor, did you, at the time that note was executed?
A. He had a note signed by J. H. Foster & Co. He delivered that note up and got this note, signed by James H. Foster & Co. and J. A. Crawford.
Q. The question was whether you owed him. Please answer that.
A. I owed him the amount of the note he held.
Q. Did you owe him the full amount of that note marked Exhibit 16 at that time?
A. I owed him the full amount of it.
Q. Who paid that note?
A. I presume Mr. Crawford paid it. He gave it to me. He agreed to pay it, and he delivered the note up to me.
Q. When did he deliver it up to you?
A. A short time ago.

(Here the note last above referred to is offered in evidence and is marked "Defendants' Exhibit 16.")

Q. You may state how much you owed Mr. Crawford on account that went as a part of this consideration for this property.
A. The balance owed to Mr. Crawford on account was $5,803.50.

Q. What was that for, Mr. Foster?

A. It was principally, most all, either for wheat or money or water rent.

Q. Had the account been running long?

A. I could not say without examining the book.

Q. Was the account on your mill books?

A. Yes; the account is on the books.

Q. How did you ascertain the amount of wheat that you were short?

A. By measuring the depth of the bins, by counting the number of square feet of wheat they contained, and taking five cubic feet for four bushels.

Q. That is the way you measured the wheat at first?

A. Yes, sir.

Q. How did you finally ascertain the number of bushels of wheat you were short?

A. Mr. Beam weighed the wheat and reported the amount.

Q. What wheat did he weigh?

A. The wheat that was in store at the time that I turned it over to Mr. Crawford.

Q. Under whose direction did he weigh it?

A. He was employed by Mr. Crawford at the time he weighed it.

Q. Under whose direction did he weigh it, if you remember?

A. I don't.

Q. Did he furnish to you the amount of bushels by actual weight that was then in store?

A. He furnished the number of pounds that the wheat weighed, as he said.

Q. What date was the wheat weighed?

A. A very few days after the sale.

Q. Have you a list of the names of parties who had wheat in store there at that time?

A. I have, I think, a list of all of them.

Q. Will you please produce it?

(Witness complies.)

(Here the master is requested to mark the list for identification, and it is marked "17" in blue pencil.)

A. I would further state that there might possibly be some persons that had wheat—a few bushels—in there

for flour that is not in the list, but none that amounts to anything.

Q. Does that list contain all of the names of parties whose wheat was in store or should have been in store at that time?

A. I think it does. I made it out as carefully as I could.

Q. You may state whether it also gives the number of bushels or pounds that each person ought to have stored there.

A. It gives the number of bushels and pounds.

(Here the list above mentioned is offered in evidence and the master is requested to substitute copies, as the original is in evidence in another case now pending in the State Circuit Court. Said list is received, a copy made and marked "Defendants' Exhibit 17.")

Q. You may state whether or not Mr. Crawford purchased all of that wheat mentioned in that list.

A. I could not state that. There may be some of it in store yet that he had given his receipts for. I know of persons holding on to wheat a long time sometimes, but he has relieved me from liability on it.

Q. Was it all purchased on new receipts given for it by Crawford?

A. I presume it was.

Q. Did you purchase some of the wheat?

A. I purchased some of it, but it was with Crawford's money, and at his request.

Q. Did you purchase it as his agent?

A. Yes, sir.

Q. Did you purchase any of it with your own money?

A. None of it with my own money?

Q. As soon as the deeds were made out, what did you do towards giving Mr. Crawford possession of the property?

A. I told the hands that I had employed there that I had sold out the property to Mr. Crawford, and that I had no more work for them, and Mr. Crawford came down and took possession.

Q. It is claimed by the complainant here that you remained in possession the same as before and managed the business the same. How about that?

A. After I sold that property to Mr. Crawford he said that he had been out of the business for a long time, and he requested me to assist him in conducting the business to some extent and to go on in there and try and have this wheat—what there was in there—ground up and the money appropriated towards purchasing in the wheat that was brought in—what money turned up towards buying that wheat that was out—and to settle up the accounts that there were—some accounts out—and it required some one that knew how to do it, and Mr. Crawford gave me a power of attorney, or something like it, for to go on and attend to this business for him, and I did so. (Record, 212 to 219, inclusive).

* * * * * * *

Q. What was the aggregate amount of indebtednes which you owed to Mr. Crawford, including the amount for which he endorsed for you and the amount paid for taking up wheat receipts which you had issued to divers persons?

A. To ascertain that amount I will have to refer to the notes taken up and to the account.

Q. Refer to said notes and the account and give the aggregate.

A. The amount, as near as I can make it out, and I think I am correct, is $64,403.50. (Record, 238).

* * * * * * *

Q. What papers did Crawford execute to you? Name all of them.

A. My recollection is now that he gave an obligation or a note for a certain amount as security that he would purchase that wheat. It was to be deposited in a certain place and held, and, when he purchased the wheat, to be delivered to him again.

Q. What kind of an obligation was that?

A. I could not say positively how it was written. Judge Strahan wrote it, but I think it was in the nature of a note.

Q. Where was it to be deposited?

A. I think it was to be deposited with Dr. Gray.

Q. Was it deposited with him?

A. It was.

Q. Who put it there?

A. I did.

Q. When?

A. I could not say positively but I think it was the next day.

Q. Did you look at it and read it?

A. I did.

Q. How much did it call for?

A. My opinion now is that it was $10,000.

Q. Just a plain note for $10,000?

A. I can't say now.

Q. One day after date or for a certain time?

A. I could not say.

Q. How long did you hold that note, or Dr. Gray hold it?

A. That I could not say. I know I went and got it and gave it to Mr. Crawford.

Q. Well, about how long? Give it as near as you can.

A. Well, my recollection—I can't tell.

Q. Six months?

A. I think it was delivered to Crawford inside of six months. (Record, 261.)

* * * * * * *

Q. What did you do with it after you got it from Mr. Gray?

A. I handed it to Mr. Crawford.

Q. How long after you got it?

A. I think I went right up and gave it to him.

Q. The same day?

A. That is my recollection of it.

Q. What did you tell Gray when you gave him the note?

A. I just told him what the arrangement was; that Mr. Crawford was to buy up that wheat, and when he bought that wheat he was to receive that note or obligation, or when he relieved me from responsibility for the wheat; and if he did not do that, that obligation was binding, as Strahan said, on him (Crawford) to me.

Q. Why did you not hold that obligation yourself?

A. Judge Strahan told me before the obligation was given the arrangement was made as to what should be done with it.

Q. When did he tell you that; what day?

A. I said that before that obligation of Mr. Crawford's was given by him the arrangement was that it was to be deposited with Dr. Gray and to be held by him, and when Crawford complied with purchasing or relieving me from responsibility for that wheat the obligation was then to be delivered to him.

Q. I asked you when Judge Strahan told you that?

A. At the time he was making it out. (Record, 262.)

* * * * * * *

THE CONTENTION OF COUNSEL FOR NEAL, THE APPELLANT.

On what evidence, then, or based upon what theory, is this court asked by counsel to overturn these positive sworn statements and circumstantial accounts of this transaction of the parties to it?

The first contention of counsel (brief, page 15) is the following query:

"If Crawford on Foster's account paid farmers for 20,000 bushels of wheat he should have something to show for the disbursement."

Surely there is no force in this suggestion, in view of the fact that Foster testifies positively that he was short in wheat to that amount; that Crawford agreed to and did save him harmless as against all claims of the farmers on this account; that on the date when the conveyances were made a note of $10,000 was given by Crawford to Foster and deposited with Dr. Gray as security for the faithful performance of his (Crawford's) agreement to hold Foster harmless as against all these claims, and of the further fact that Crawford testifies positively to the same thing.

And, again, on page 17 of counsel's brief, suspicion is sought to be thrown on the wheat transaction by the following suggestion:

"Page 215 Foster states that he (Crawford) became

responsible for a wheat shortage of 19,541 bushels; and on page 216 he explains that some of this wheat was purchased, and that for other portions of it Crawford gave his receipt; and on the same page he states that he bought some of the wheat himself, but paid for it with Crawford's money. We need only to suggest to the court how easily frauds could be practiced in this manner by Foster using his own money simply to purchase the wheat in Crawford's name and exchanging his old receipts for Crawford's." (Counsel's Brief, page 17.)

This suggestion of counsel, it is respectfully submitted, unsupported as it is by any testimony whatever, and overwhelmingly refuted by the positive and uncontradicted testimony in the case, simply amounts to nothing.

The testimony of both Foster and John A. Crawford as to the Paxton note of $4,810 (record, Exhibit 16), is sought to be overthrown by counsel by the following statement:

"This man Paxton was a confidential friend of Foster and his miller, and the note purports to be for wages and for money loaned. Such a transaction between master and servant, and such an accumulation of wages, seems suspicious, to say the least." (Counsel's brief, p. 17.)

This suggestion surely can have no weight in the face of the positive testimony of Foster that the note was due and owing and had never been paid, and also the positive testimony of Paxton himself.

Paxton testifies as follows in regard to this matter:

* * * * * * *

Q. You may state whether Mr. Foster owed you at the time you left his employ and went to Weitsburg, in August, 1883?

(Objection by Weatherford as immaterial, irrelevant, and leading.)

A. Yes; he did owe me.

Q. About how much did he owe you, and what did you do towards collecting it at any time?

(Objection by Weatherford as immaterial and no issue upon that.)

A. At that time, in August, when I left there, he owed me, I think, a little—about $6,000. He paid some on it—a thousand dollars, I think—some at the bank, and took up a note that I had there along in February or the last of January. I came down to Albany and I wanted him to pay me. He said he could not raise the money, and I wanted security, and he asked me whether, if John Crawford went on the note, whether it would be good, and I told him it would, and he asked Mr. Crawford to go on the note, and he did so.

Q. Have you the note that John Crawford went on at the time?

A. I have not, but I have a copy of it.

(Here Exhibit "16" is shown to witness.)

Q. Is that the note?

A. Yes, that is the note.

Q. You may state who paid you that note, if it has been paid.

A. Mr. Crawford paid some of it and Mr. Connor sent me the balance; I left it at the bank and Mr. Connor sent me the balance of it. I think Mr. Crawford paid me $3,000 at one time, and, if I remember right, a $1,000 order on John McCraken here for a $1,000. I have a copy of the note here (reads): a 1,000 1884 in an order on John McCraken.

Q. Mr. Connor is the banker there in Albany, is he?

A. Yes, sir.

Q. And you left the note with him for collection?

A. Yes, sir.

Q. Has it all been paid up?

A. Yes, sir. (Record, 302, 303.)

* * * * * * *

On cross-examination Mr. Paxton testified as follows:

Q. Mr. Paxton, will you please state whether or not this note referred to by you was made payable the 1st of January, 1884 or 1885?

A. 1885, I should judge. The 5 is marked out. It was intended for that, I should think, from the date of it.

Q. When was this $3,000 paid on that note, Mr. Paxton?

A. Does it not say on the back of it? I could not tell. I can tell by this other note. When he gave the other note he paid $3,000. I can't tell when that note was given; I don't remember now.

(Witness consults a memorandum book and adds.) March 5th is here.

Q. What year?

A. March 5, 1884, $1,512; October 20th paid $1,000, and January 18th paid $500.

Q. In what year?

A. 1885; June 18th it was.

Q. Was that about a month after the note was given that he paid you $3,000?

A. When he gave the new notes, you know, that would be March 5, 1884; then he paid that $3,000. Then he gave his individual note and took up that note—gave his individual note for $1,512 and took up that note.

(The note referred to is Exhibit "16.") (Record, 303, 304.

* * * * * * *

The open account of $5,803, which both Foster and Crawford swore positively was existing and unpaid February 6, 1884, and which was turned in by John A. Crawford as a part of the consideration for the conveyance to him, is questioned in like manner in counsel's brief, but it is submitted without a particle of evidence to support the opposition made to it.

Reliance is next placed by counsel on certain alleged contradictory statements said to have been made by Mr. Crawford and Foster. (See counsel's brief, pages 18-22, inclusive.)

First it is said W. H. Goltra testified that in June, 1883, he had a conversation with John A. Crawford, in which the latter said he neither had any interest in the mill nor did Foster owe him anything. It must be remembered in this connection that this witness, Goltra, is the defendant in this case in the cross-bill filed by Foster and the Crawfords against him. His interests are ad-

verse to the Crawfords. He claims to hold a judgment of over $16,000 against Foster, and he has been defeated, as this record shows, in his attempt by a suit in the State court to set aside these conveyances and subject the property conveyed to payment of his judgment. In addition to this, his testimony as to what was said is vague and uncertain; but not only so. John A. Crawford, in his testimony, on being inquired of as to this alleged conversation with Goltra, said (I quote from the testimony):

Q. Mr. W. H. Goltra testifies that in a conversation he had with you in 1883 you told him that Foster neither owed you nor had you any interest in the mill. How is that?

A. I can't recollect any such conversation with him or anybody else.

Q. He also states in that conversation he asked you concerning Mr. Foster's financial circumstances and what interests you owned in Foster's mill. State what you know about that conversation, if you had any such with him.

A. I have no recollection of having had any such conversation, and I had no such interest in the mill in 1883 that I know of.

Q. State whether Mr. Goltra ever consulted you about Foster's financial standing in 1883, or prior to the sale of the mill by Foster to you.

A. He may have talked to me—I don't recollect, though—about Foster's financial standing. I did not know what that was. He appeared at that time to have a good standing in the community. Whether I had such a conversation or not I don't remember.

Q. Mr. W. H. Goltra testifies that after the sale of the mill from Foster to you that he had a conversation with you near his store, and that you said that Foster owed you $76,000, and that he asked you how you came to let him owe you so much without security, and that you said the most of it was in the Bank of British Columbia, old notes that you supposed was paid, and that the interest had accumulated to a large amount. State about that conversation, if you had such.

A. I don't recollect of having that conversation.

Q. Did you have any such conversation as to what Foster owed you after the sale and as to what you paid for the property with Mr. Goltra?

A. We may have had a conversation, but I don't recollect; and if I told him what I paid it was correct.

Q. You may state whether you told him that Foster owed you $76,000.

A. I don't think I could have told him anything of the kind, for he was not owing me that amount.

Q. You may state whether you told him that the amount of what he owed you was in notes of the Bank of British Columbia.

A. Well, I did not tell him any such thing, for it was not so. I did not tell him anything only what was so, if I told him anything. (Record, 324.)

* * * * * * *

Mr. John A. Crawford in his testimony in regard to these alleged conversations said to have taken place with different witnesses, said this:

"There was one thing I do know—if people was to try to find out my private affairs I gave them an evasive answer, that I did not know, or that I did not recollect, or something of that kind." (Record, 324.)

Again counsel quotes the testimony of Dr. J. L. Hill, (see counsel's brief, pages, 18, 19) as to certain statements alleged to have been made by John A. Crawford, about 1883, to the effect that at one time Foster had owed him either $20,000, or $24,000, but that Foster had paid it. Mr. John A. Crawford (record, 324) in response to this, says:

"I can not recollect what conversation I had with him at that time. There is one thing I do know—if people was to try to find out my private affairs, I gave them an evasive answer that I did not know, or I did not recollect, or something of that kind." (Record, 324).

Again, the testimony of E. T. T. Fisher is quoted by counsel to the effect that Crawford stated before the

grand jury that Foster did not owe him. In response to this, Mr. John A. Crawford testifies (record, 326) as follows:

Q. Mr. E. T. T. Fisher testifies that he asked you if Mr. Foster did not owe you for property there to be taxed for taxable property, if he did not owe you, and that you said he did not, and that this conversation took place in the grand-jury room about 1881 or '2?

A. I went in to make an explanation respecting taxes, and I told them that there was parties who had agreed to pay the taxes on money that they were owing me. I don't recollect much about the conversation, but I told them who was to pay the taxes, and that I was to be released from it by the parties that was owing me.

Q. The grand jury had that under investigation, did they not, and claimed that you had not given in all that was owing to you on taxable property that year and the last?

A. Yes.

Q. Was F. M. Daniels present in the room as one of the grand jury?

A. I don't know. I don't know F. M. Daniels. He may have been.

Q. Do you remember whether your attention was called particularly as to whether Mr. Foster owed you at that time?

A. I could not say; I think I was, though; at least, if it was not alluded to, I think I mentioned it. (Record, 326.)

The next reliance of counsel is on the testimony of George E. Chamberlain as to what Crawford said in regard to his taxable property in September, 1881, but a reference to the whole of Mr. Chamberlain's testimony, so far from casting any doubt upon the positive testimony of Crawford and Foster, only confirms that testimony. Mr. Chamberlain's testimony in full—it is brief—is as follows:

GEORGE E. CHAMBERLAIN, called as a witness for complainant and duly sworn, testifies:

My name is George E. Chamberlain; residence, Albany, Oregon; age, 32; occupation, banker, formerly lawyer.

(Exhibit C is here shown witness.)

This paper was executed by John A. Crawford. I wrote the body of that instrument at John A. Crawford's request. Mr. Crawford had had trouble with his assessments, and desiring to correct his assessment of 1882 came to me and stated that his assessment was too large; that various parties owed him upon which they had agreed to pay the taxes, and he desired an affidavit prepared to reduce his assessment. I advised him that the law did not contemplate that the same property should be taxed twice, but told him it would be best before making the affidavit he desired to have some one examine the assessment lists for that year to assure himself that the parties who had agreed to pay the taxes on amounts they owed him were living up to their agreement. To this end he employed Mr. O. H. Irvine to make the examination referred to. This was done. The names of the parties who had taken out their indebtedness to him were reported to Mr. Crawford, and to the aggregate amount thus reported was added certain other notes and accounts owned by Mr. Crawford, some of which was in my possession, and upon the whole, $13,500, as I now remember, was placed at a fair valuation. I do not think the indebtedness of Foster (James H.) to Mr. Crawford was included in that estimate of $13,500. That estimate was arrived at, as I have before stated, in my testimony.

Said instrument is here offered in evidence by the complainant, and the master is requested to make a certified copy of the same in lieu of the original, as it is on original file of Linn County. Said copy is made and marked Complainant's Ex. "C." (Record, 182.)

From this it clearly appears that Mr. Crawford took special precautions to ascertain whether certain of his debtors, including Foster, had or had not deducted their indebtedness in the return of their property for assessment

purposes, and as to all these Crawford did not include and did not intend to include in his statement to the assessor or county clerk such notes as taxable. Had he done so the property would have been subject to *double* taxation—the very thing Mr. Crawford was aiming and properly aiming to avoid.

But not only so. John A. Crawford upon this point testifies as follows:

(Here "Exhibit C" is shown to witness.)

Q. You may state whether or not you got George E. Chamberlain to write an affidavit for you in regard to taxes at any time.

A. I did.

Q. Do you recollect the year?

A. I don't recollect it, but I see here by the affidavit that it was in September, 1882. I suppose——

Q. Was it after the grand jury had been investigating your tax record or before?

A. I think it was after.

Q. You may state whether or not the subject of that investigation by the grand jury was talked over by you and Mr. Chamberlain at the time the affidavit was written?

A. I think it was.

Q. You may state whether or not the taxes that other parties who owed you had agreed to pay was in that affidavit that you then made?

A. That is what I understood at the time.

Q. I want to know whether you intended to include the taxes that Foster and others agreed to pay for you on the amount they owed you or whether you intended to leave those taxes out of your assessment and let them pay them. If you have any recollection upon that subject please state.

A. I have some recollection on that, and I did intend not to put them in, and I did not put them in.

Q. What advice did Mr. Chamberlain, as your attorney, give you upon that subject at that time, if you recollect?

A. He advised me to go to the court-house——

Q. I refer to putting that in.

A. I asked him if it was right for to keep that out. I had agreed with the parties to pay the taxes who had borrowed the money. He said it was not right to have the taxes paid twice; that it was right for to keep that out, and I had parties to go up to the records and to see if there was any of the parties who had put in their taxes, to see if they had put in them against me, and to fetch a list of the parties that had put in their assessment, and we could not observe any in that list that had put it in against me at that time of those that had promised to pay them.

Q. At the time the subject of your taxes was investigated by the grand jury you may state what was claimed by the grand jury about your owing the Odd Fellows' Hall Association.

A. It was claimed that the Odd Fellows' Association was owing me $5,000, and that I had not put that in for one of the items, and some others that they claimed I did not put in that I don't recollect.

Q. Who swore to that before the grand jury?

A. John H. Burkhart put that in this indebtedness against me for the Odd Fellows' Association.

Q. Did he go before the grand jury?

A. I think he did.

Q. As a matter of fact did the Odd Fellows' Association owe you anything at that time or at any other time?

A. Neither at that time or at any time.

Q. Was John H. Burkhart the secretary of that association or company?

A. He was.

Q. Did he afterwards confess to you that he was mistaken?

A. He did. (Record, 327–329.)

Counsel in his brief (pages 20, 21) refers to a certain settlement of certain accounts made between Foster and Crawford in 1876, and remarks:

"It seems strange that in such a settlement when an amount of cash was paid to balance the accounts and make a complete adjustment, defendant's exhibits 14 and 15, all of them overdue at the time, were not incor-

porated in that settlement if they were still unpaid." "And the same remark," says counsel, "applies to exhibits 11 and 12, each of them dated April 28, 1876."

These notes are exhibits 14 and 15—the date of the first gone, and the second, January 1, 1875 (record, 521–532) and exhibits 11 and 12 (record, 531), the date of the first being April 28, 1876; that of the second being the same date—the former for $8,605, the latter for $5,325. But both Foster and Crawford testify positively that these notes were genuine; that they were *not* included in the settlement of 1876; that they were existing and subsisting notes against Foster and in favor of Crawford in February, 1884, and is this positive testimony to be overthrown by the suggestion of counsel to the effect that it "*seems strange that they were not included in the settlement?*" There is nothing, moreover, in the testimony from beginning to end to justify the inference that this settlement was a full and complete settlement of all transactions of every nature between them or anything more than a settlement as to certain specified accounts.

Again (page 26, brief) counsel says:

"It seems incredible that he (Foster) should have expended this amount of money on the mill, should have engaged in erecting bank buildings and constructing water-works without even paying interest on the notes for the purchase price of the mill and the other notes alleged to be due John Crawford."

Here, the court will perceive, counsel, instead of basing his contention on any testimony, simply relies on what he conceives to be "the improbabilities of the case."

FOSTER DID NOT REMAIN IN POSSESSION OF THE MILL.

Counsel contends that Foster remained in possession and exercised acts of ownership after the transfer.

This contention is not well founded except as to the one residence, and a careful examination of the evidence leads to an entirely satisfactory explanation on this point. The defendant, Foster, as the testimony shows, was a practical miller, and the reasons for his retention as superintendent of the mill, and also the reason for permitting Foster to remain in possession of the residence, are very clearly and, as we believe, correctly stated by the court below in his opinion in this case. (Record, 91, 92.)

The court says:

The only specific circumstance urged against the good faith of this transfer is the fact that Foster remained in possession of the mill and dwelling house and his declaration while there. The acts and declarations of a vendor in possession after the sale are competent evidence against the vendee on the question of the character and purpose of such sale and possession. (Bump, F. C., 569; U. S. *v.* Griswold, 7 Saw., 316.) But such acts and declarations are not conclusive, and must be considered in the light of all the circumstances. Mr. Foster was an old man who had done business in Albany as merchant and miller for over thirty years. When he failed and transferred his property to his life-long friend and principal creditor, John A. Crawford, it was not unreasonable nor out of the ordinary course of business for the latter, who was over 70 years of age and had been out of the milling business for many years and was otherwise much engaged, to retain Foster as superintendent of the mill, both for his own interest as well as a kindly consideration for Foster, who was then thrown on the world without any visible means of support, at a compensation of $75 per month and the use of the dwelling house in which he lived; but Foster's declarations to his other creditors, all of whom are represented in the several judgments mentioned in the pleadings, do indicate that he expected to get the mill back again, either as owner or lessee of Crawford, in which case, if times "livened up," he would be able to pay all his debts from the profits of the mill; but I am satisfied

he either went beyond the fact or his hearers, smarting under the loss of their claims, have remembered and repeated his statements for more than they were worth. As is said by counsel in the brief for plaintiff, "each of these witnesses was not only a friend of many years' standing with Foster, but also a creditor. Some of them had sold him wheat only a few days before the transfer, and in the presence of men whom he had so wronged * * * and who, nevertheless, still displayed some old-time loyalty and friendship towards him, it is quite natural he should seek to placate them and restore himself in their esteem by an explanation that would not leave them hopeless.

Under these circumstances Foster might have made statements and held out hopes that implied in the willing minds of his anxious hearers that, after all, the transfer was only a contrivance to tide over a financial difficulty, and in the meantime Crawford was only holding the property in trust for him.

One form of declaration attributed to him is "that if he could make arrangements with his creditors he could lease the mill and pay them off, if times 'livened up,' out of the profit of it." And this declaration is perfectly compatible with a *bona fide* sale. Neither would it be difficult or extraordinary for those who would have it so to remember and relate how Foster said "he was going to get the mill back again as soon as he could arrange with his creditors," with the implication, of course, that such was the purpose of conveying it to Crawford.

However this may be, there is nothing in Foster's possession or presence at the mill or employment by Crawford inconsistent with good faith on the part of the purchaser; and so far as any of his declarations import the contrary, assuming that he has been correctly reported, they are easily accounted for, and are also contradicted by the admitted and controlling circumstances of the case.

Mr. James H. Foster upon this point testifies as herein stated.

(Record, 218, 219; also, this brief, .)

THERE WAS NO UNDUE HASTE—OR ANY OTHER SUSPICIOUS CIRCUMSTANCES CONNECTED WITH THESE TRANSFERS.

Counsel claims, further, that all these transfers were made late at night and with suspicious haste. This charge is wholly unsupported by the testimony. The testimony of all the parties is to the effect that negotiations ran along through some three or more days before finally consummated. (See testimony of John A. Crawford, Record, 310, 311; also this brief, *supra.*)

THE GREATER PORTION OF THE DEBT INCLUDED IN THE SIBSON, QUACKENBUSH & CO. JUDGMENT WAS INCURRED SUBSEQUENT TO FEBRUARY 6, 1884.

It is moreover very apparent that but $6,060.61 of the $14,046.72 for which judgment was recovered against defendant, James H. Foster, by Sibson, Quackenbush & Co. March 8, 1886, and which plaintiff Neal claims to own by assignment to him, were on account of debts contracted by Foster prior to February 6, 1884, the date of the conveyances sought to be set aside. This claim, it must be remembered, was one originally held by Sibson, *Church* & Co., and by that firm alleged to have been transferred, first on July 15, 1885, to Sibson, *Quackenbush* & Co. (complainant record, 10), and, second, on July 11, 1886, to plaintiff Neal (complainant record, 10). The weight of testimony is clearly to the effect that all but $6,060.61 of the amount constituting the judgment of $14,046.72 was an indebtedness incurred, if indeed it really ever was incurred, subsequent to February 6, 1884, the date of the conveyances attacked in this suit, and, consequently could not have been incurred on the faith of Foster's ownership of the property included in these conveyances.

The statement of the account rendered April 15, 1884,

by Sibson, Church & Co. to J. H. Foster & Co. (record, 520, 521) shows that the amount claimed to be due to date, January 24, 1884, was $6,060.61, which was but thirteen days prior to the date of the conveyances from Foster to the Crawfords, while the next item in the account is of date February 16, 1884—ten days subsequent to the date of the transfers.

The Plaintiff Neal fails to do Equity.

The assignors of plaintiff—residents of the same State of the defendents—fully cognizant of the transfers from Foster to the Crawfords, stand idly by from February 6, 1884, until June 11, 1886—a period of over two years and four months—during which time the Crawfords were in possession of the mill, the brick block, and other property purchased by them, making valuable improvements thereon; William Crawford during that time having expended $2,000 on the brick block, and John A. Crawford having spent a "*great deal of money in fitting it* (the mill property) *up since*" (record, 317); and then these assignees attempt to transfer their judgment to plaintiff Neal who three weeks later, July 1, 1886, institutes this suit. No tender is made for amounts expended in improvements—made during this period of *two years, four months and twenty-four days*—that plaintiff and his assignors stood by seeing the Crawfords expend their money in the improvement of this property. He who seeks equity must do equity, is an old adage. For the reasons alone just suggested the decree of the court below in this suit as to William Crawford should be reversed and the decree as to John A. Crawford should be affirmed.

FOSTER IN THE CONVEYANCES OF FEBRUARY 6, 1884, TO JOHN A. AND WILLIAM CRAWFORD AND ASHBY PEARCE, ALTHOUGH AT THAT DATE INSOLVENT, DID NOT CONVEY AWAY ALL HIS PROPERTY.

The answer avers (record, 23), and the proofs sustain the averment (see evidence, record, 200, 300, and 309–370), that Foster owned the following unimcumbered property that was not included in any of the conveyances of February 6, 1884:

1. A large amount of flour and feed in the mill in Albany.

2. A large amount of flour shipped by Sibson, Church & Co. to Europe, and sold by them for Foster during the *last part of the year 1884*.

3. An account due Foster from Everding and Farrell, of Portland, of $413.14, which was afterwards paid to Sibson, Church & Co. on Foster's account. (See account rendered of Sibson, Church & Co. to Foster (record, 521–7) showing this payment, February 9, 1884.

4. Fifty thousand barrels of flour at Portland, which were sold in the summer of 1884 and the proceeds paid Sibson, Church & Co. on Foster's account (record, 23), also the several accounts (record, 522–525.)

The fact that this large amount of property, which Foster *might* have included in the conveyances of February 6, 1884, and which, had he intended to hinder, delay, or defraud his creditors, he certainly *would* have included, was omitted therefrom, is of itself a convincing proof that he meant nothing dishonest in the transfers to the Crawfords and Ashby Pearce.

Authorities.

LEGAL PROPOSITIONS APPLICABLE TO THIS CASE.

The conveyances sought to be set aside in this case were executed in Oregon by an Oregon debtor to Oregon creditors covering lands located in that State. They are, therefore, Oregon conveyances, the validity of which must be tested by the laws of Oregon on the subject of fraudulent conveyances and by the construction placed on such laws by the Supreme Court of that State. (Peters *v.* Bain, 133 U. S., 771.) The fact the plaintiff is a citizen of the State of Illinois does not alter this rule. (Livermore *v.* Jenckes, 21 How., 126.)

As to the Oregon statute of frauds bearing upon this question, see Hill's Annotated Laws of Oregon, vol. 2, pp. 1373, 1374, sections 3059–3065 inclusive.

The principles of the statute of 13 Elizabeth, chap. 5, have been incorporated into the Oregon statutes with this modification, which has also been adopted in most of the States: that is, that when the question of the validity of a conveyance of property depends upon its fraudulent character it must be shown that the grantee participated in the fraud, and the fact that the grantor alone is guilty is not sufficient to invalidate the conveyance.

The Oregon statute is taken from the New York code and is a copy of it.

In Stevens *v.* Gage, 79 N. Y., 102, and in Parker *v.* Conner, 93 N. Y., 118, it was held that when a valuable consideration had been paid, actual notice on the part of the grantee of the grantor's fraudulent intent is necessary to avoid the conveyance to creditors and others. The Supreme Court of Oregon hold to the same rule (McLane *v.* Henecky *et al.*, 11 Oreg., 327).

In Bergman *et al. v.* Twilight, 10 Oregon, 337, the court, opinion by Mr. Justice Lord, held that where the question was as to the good faith of a sale, whatever was said and done by the parties to the transaction cotemporary with it, and which tend to explain and elucidate its character, are parts of such transaction, and as such are admissible in evidence, and may be proven by either party. (Banfield *v.* Parker, 36 N. H., 357; Bump, F. C., 562.) Such acts and declarations are admissible in evidence in favor of the grantee (Elliott *v.* Stoddard, 98 Mass., 145), as well as of creditors, and the acts and declarations of the grantee which accompany the transfer, stand on the same footing as those of the debtor. (Boyden *v.* Moore, 11 Pick., 363.)

In this view the testimony of Judge Strahan (record, 304–309) as to what was said by Foster and Crawford at the time these conveyances were executed becomes important, and his testimony is highly corroborative of their testimony on the question of good faith, as is also the testimony of Mr. Isaac Beam. (Record, 410.)

Isaac Beam, called and sworn on behalf of defendants.

Questioned by Flinn:

Q. State your name, age, residence, and occupation.

A. Isaac Beam; aged 38; residence, Albany, Oregon; occupation, miller.

Q. Are you acquainted with James H. Foster and John A. Crawford, of Albany?

A. Yes, sir.

Q. By whom were you employed and in what capacity immediately prior to the sixth of February, 1884?

A. By James H. Foster, as retailer in the Magnolia mill.

Q. Do you recollect the sale by Foster to Crawford about that time?

A. Yes, sir; I recollect the transfer and the sale.

Q. You may state what occurred as to the possession

or the change of possession. What was done by Mr. Foster towards discharging the hands, and what was done by Mr. Crawford, if anything, towards employing the hands in the mill?

A. Well, Mr. Foster discharged all the hands; well I heard him tell them, three or four of the hands, and he told me he discharged me, and Mr. Crawford hired me right away and told me to go to work for him and he would see that I got my pay; that he wanted a man in the mill, and he would see that I got my pay; and I have remained there ever since.

Q. What did Mr. Foster do or say and where was he when he discharged the hands?

A. He was in the office. He said he had sold out his property, and he was broke up; that he did not own anything else; that he could not pay the hands, and he had nothing for them to do or to pay them with. That is the way he told me; he said: "I have nothing more for you to do; nothing more to pay you with."

Q. When was that? State as near as you can remember.

A. As near as I can remember, that occurred about the ninth or tenth of February. That was a few days after the sale (record, 410).

The testimony of John McCraken (record, 401) goes far to corroborate both Foster and Crawford in their testimony as to the good faith of the conveyances.

Colonel McCraken testifies that Foster came to his place of business in Portland some time about the first of February, 1884, which was but a few days prior to the execution of the conveyances, and told him he was very much in need of money. "Said he wanted money to pay for wheat. Said he had payments to make on wheat; that is the way he put it, and desired me to aid him in borrowing $10,000."

Colonel McCraken made the effort by seeing Mr. Rodgers, the manager of the Dundee Mortgage Savings Company, but as that company was drawing in its loans he did not succeed. McCraken then suggested that he

would make an effort with the Bank of British Columbia. Foster gave him to understand that he could not go there as he was already owing at that bank. Colonel McCraken further testified (record, 401); says:

"I asked him if he had asked Mr. Crawford for money; mention the reason of my asking him was this: he had told me a number of times previous to this that he had got money from Mr. Crawford when he needed it. His reply was that he had not asked Mr. Crawford for money; that he was owing Mr. Crawford a good deal at the time."

Colonel McCraken also states (record, 402) that a few days after he had a conversation with Mr. John A. Crawford, when he told him Foster had been making efforts to borrow money, when Crawford inquired "Does Foster want money," and I said "Yes, he wanted $10,000, and in a very few minutes he left the office. We had very little, if any, conversation after that."

The Oregon statute as to fraudulent conveyances is in substance and effect and almost identical in language with the statute of the State of Virginia on that subject. In Peters *v.* Bain, 133 U. S., 686, this court said:

"In controversies arising under this statute, involving as they do the rights of creditors locally and a rule of property, we accept the conclusions of the highest tribunal as controlling. (Jaffray *v.* McGee, 107 U. S., 361; Lloyd *v.* Fulton, 91 U. S., 479; Allen *v.* Massey, 17 Wall., 351)."

An assignment for the benefit of creditors preferring unsecured creditor is not *prima facie* fraudulent. (Kruse *v.* Prindle, 8 Oregon, 158).

FOSTER HAD A RIGHT TO MAKE A PREFERENCE.

Foster had a right to make a preference as between his creditors. The right to make a preference resulted from the dominion which the owner has over his property. It

is a part of his proprietorship. The law has not said he shall divide his estate *ratably* among his creditors. It has left him the discretion to act as he wills, provided only he acts with honest intent to pay a valid debt, and does not under cover of such a disposition stipulate for a benefit to himself. (Eldridge *v.* Gunter, 58 Miss., 270; Estees *v.* Gunter, 122 U. S., 455; Bump, F. C., 304; 11 Wheat., 78.)

In the case of Kruse *v.* Prindle (8 Oregon, 158), the court said:

"The appellants having charged Williams and Prindle with collusion and conspiracy in procuring this conveyance to be made for the purpose of defrauding and preventing them from collecting their debts, the onus is upon them to prove it by legal and competent evidence. This they have failed to do (Bump, F. C., 368). * * * In this case the evidence not only fails to show collusion and conspiracy between Williams and Prindle with intent to delay or to defraud the appellants, but, on the contrary, it shows that Williams was an insolvent debtor, and that these conveyances were executed for the purpose of making distribution of the proceeds of his property among his creditors. The fact that such creditors as were secured by mortgage were preferred in said assignment did not vitiate and render the same void, as under the law a debtor has the right to prefer one creditor to another." (Bump, F. C., 344; 11 Wend., 241; 3 Paige, 537; 11 Wheat., 566.)

The right to make an assignment to secure creditors and give a preference is an incident of the ownership of property. (7 Peters, 614; Peters *v.* Bain, 133 U. S., 690.)

The object of the statute is to prevent deeds fraudulent *in their inception and intention*, and not merely such as *in their effect* may hinder or delay creditors. It is the corrupt and covinous motive, the fraudulent *intention*, the *mala mens* with which the conveyance is made that

constitutes the fraud against which the denunciations of the statute are directed. (Bump on F. C., 346.)

The statute was never intended to restrict the debtor from paying or securing creditors whom moral duty and a sense of justice may dictate the propriety of paying or securing. So long as a debtor remains in contemplation of law the absolute owner of property it can not be said of an appropriation of such property exclusively to the purpose of paying either, all, or a portion of his honest debts that it is a contrivance to hinder, delay, or defraud creditors. (Bump on F. C., 346, and authorities there cited.)

THE PRINCIPLE—CONVEYANCES FRAUDULENT IN PART VOID IN TOTO—HAS NO APPLICATION TO THIS CASE.

While the general proposition is conceded, as contended for by counsel, that if a conveyance is made with the intent to secure a part of the property to the vendee, and to cover the residue for the use of the debtor, the vendee having knowledge of such fraudulent intent, it is void as to the whole, unless the fraud is one of law and not of *fact*, it is respectfully submitted the rule has no application to this case in any of its phases. Conceding for the argument that either one of the two tranfers, namely, to John A. Crawford for tracts 1 to 5, and to William Crawford for tract 6, was fraudulent and the other was in good faith, then, inasmuch as there are *two separate and distinct transactions*, there being *two* different grantees, and each transaction resting on its own distinctive consideration, each must stand or fall on its own merits, irrespective of the other. John and William Crawford were not in any sense whatever *co-grantees*.

But, further, when fraud is imputed from the mere omission to deliver the possession of the property to the

grantee, the transfer will be good as to the part delivered, although it may be void as to the residue. (Burgess on F. and C., 2d ed., 477, and authorities there cited.)

The assignment may convey all the debtor's property, or it may convey only a part. (Bump, F. C., 371.)

It is not necessary that the creditors should be counselled or that they should consent, or that that fact should appear upon the face of the deed. (Bump, F. C., 371.)

THE BURDEN OF PROOF IS ON PLAINTIFF.

When a conveyance is attacked for fraud and illegality by a creditor, the *onus* is upon him to establish the fraud and illegality by *proof*, and in order to defeat it on that ground, it must be shown that the assignor and the assignee both participated in the fraud. (Kruse *v.* Prindle 8 Oreg., 158.)

The *onus* is upon the creditor who assails a conveyance to show it is fraudulent. It is a universal rule that fraud is never presumed. The party that charges fraud is bound to prove it. (Bump on F. and C., 2 *Id*, 358; Jones *v.* Simpson, 116 U. S., 615.)

Mere *conjecture* or *surmise* is never allowed to establish fraud. (Bump on F. and C., 358; *Ex parte* Conway, 1 2 Ark., 302.)

In Jones *v.* Simpson (116, U. S., 615), this court, opinion by Justice Harlan, said:

"A further objection is made to the direction given by the court 'that fraud is never presumed, but must be established by evidence.' Of the correctness of this proposition, or of its application to the case, there should be no question, but counsel seemed to argue that the burden of proof was upon the plaintiff to show that he did not participate in the fraud. Fraud is not so lightly imputed. While certain circumstances will

give rise to an inference of fraud, yet the law never presumes it. It devolves on him who alleges fraud to show the same by satisfactory proof. * * * As the trial court stated, 'the law presumes, in the absence of evidence to the contrary, that the business transactions of every man are done in good faith and for an honest purpose, and any one who alleges that such acts are done in bad faith, or for a dishonest purpose, takes upon himself the business of showing the same." (See also Wilson *v.* Fuller, 9 Kansas, 176; Diefendoef *v.* Oliver, 8 Kansas, 297; Wolfley *v.* Rising, 8 Kansas, 297; Prewit *v.* Wilson 103, U. S., 22; Stewart *v.* Thomas, 15 Gray, 171; Elliott *v.* Stoddart, 98 Mass., 145; Hatch *v.* Bailey, 12 Cush., 27; Cooke *v.* Cooke, 43 Maryland, 522.)

A conveyance upon a valuable consideration can not be declared void as to creditors, though made with a fraudulent purpose on the part of the vendor, unless the vendee participates in or had notice of such purpose. (Astor *v.* Wells, 4 Wheat., 466; Worth *v.* Coddell, 76 N. C., 82; Previtt *v.* Wilson, 103 U. S., 122.)

Fraudulent intent upon the part of the debtor alone is not sufficient. (Bump, F. C., 363; Bonser *v.* Miller, 5 Oregon, 110.)

In Previtt *v.* Wilson, 103 U. S., 122, this court, opinion by Mr. Justice Field, said:

"When a deed is executed for a valuable and adequate consideration without knowledge by the grantee of any fraudulent intent of the grantor, it will be upheld, however fraudulent his purpose. * * * To vitiate the transfer in such a case the grantee also must be chargeable with knowledge of the intention of the grantor."

Conclusion.

In conclusion, one of two things is true. If it is true, as averred in complaint, that the two judgments of Sibson, Quackenbush & Co., amounting to $14,037.87, and of W. C. Noon & Co., amounting to $1,909.15, were purchased in good faith by plaintiff for the sum of one dollar cash each, and for two promissory notes aggregating $5,500, which were never paid, then the plaintiff, a non-resident of the State, a citizen of Illinois, appears in this case in the attitude of a *speculator;* dealing in uncertainties, risking losing the whole amount alleged to have been paid, together with the cash and expenses of a long litigation, for the chance of securing the face value of the judgments, by means of setting aside conveyances made by a citizen of the State in failing circumstances, for the purpose of securing his life-long friends, neighbors and creditors who had for years been carrying him financially, and which conveyances had been of record *two years and five months*, and had been declared *valid* by the Oregon courts.

If, on the other hand, the alleged transfers of these judgments were, as the whole testimony taken together clearly shows, mere *shams* of the most *transparent character*, and for the *sole* purpose of conferring jurisdiction on the Federal Court, then the *fraud* in this case is on the side of the plaintiff. This court as well as the court below have been imposed on, and the decree of the court below should be reversed for want of jurisdiction.

The court will note the record in this case shows that this suit was not commenced until July 1, 1886 (record, 16), nearly two and a half years subsequent to the date of the conveyances (February 6, 1884) sought to be set aside. It is further shown in testimony that William Crawford had expended over $2,000 in improving the

property purchased by him (record, 317); while John A. Crawford testifies (record, 317) as to moneys expended on the Magnolia Mills property subsequent to his purchase.

Q. What is that Magnolia property worth now?
A. I believe I would take for the mill $20,000.
Q. I meant the mill, machinery, and the warehouse.
A. Well, I meant the warehouse, mill, and all the machinery. I would take $20,000 for it now.
Q. Is it not worth a great deal more than when you purchased it?
A. I think it is. *I have spent a great deal of money in fitting it up since.*

This witness, in testifying as to the improvements made by him, as agent for his brother William, on the property purchased by William, says:

Q. That block that was deeded to your brother, what was that worth at that time (meaning February 6, 1884, the date of sale)?
A. I think at that time the brick block was worth about $20,000.
A. What is it worth at the present time (Dec. 24, 1886)?
A. I could not say as to that.
Q. Is it in as good condition as it was then?
A. It is in better.
Q. Have you improved it?
A. I have.
Q. How?
A. I have extended it out 20 feet, and built up offices, etc.
Q. In what direction have you extended it?
A. North. After I purchased it I had to reduce the rents.
Q. Why?
A. On account of dull times, and the parties that was in it said they could not pay the rents they had been paying.

Q. About how much have you expended in improving it since you purchased it?

A. I could not say exactly. I think about $2,000. I have not completed it yet.

It further appears in testimony that so far from Foster retaining possession of the Magnolia Mills after the sale to John A. Crawford, February 6, 1884, the property was rented by Crawford in October, 1884. (See testimony of E. J. Lanning, Record, 404.)

JURISDICTION.

In addition to the points suggested bearing upon the question of jurisdiction heretofore filed, attention of the court is attracted to the fact that this suit is one which could not under the law have been originally commenced in the Circuit Court, inasmuch as the suit is brought by an assignee of a claim, the assignors of which, being citizens of the same State as that of the defendants, could not have prosecuted a suit thereon in the Federal court if no assignment had been made—the act of March 3, 1875 (18 Stats., 470), providing as follows:

"Nor shall any circuit or district court have cognizance of any suit founded on contract in favor of an assignor, unless a suit might have been prosecuted in such court to recover thereon if no assignment had been made, excepting in cases of promissory notes, negotiable by the law merchant, and bills of exchange."

But inasmuch as it had been held by this court in the case of Claflin *v.* Commonwealth Insurance Co., 110 U. S., 81, that the second section of the act authorizes the removal of causes without imposing the restriction as to assignees and assignments, the plaintiff commences his suit, as he was compelled to, in the State court, July 1, 1886, and immediately—within four days—after the filing

of the complaint, July 4, 1886, makes his application for removal to the Circuit Court (Record, 6).

While it is true the plaintiff may, under the rulings, have had the right in law to do this very thing, and while by doing it he may, if the transaction were *bona fide*, have brought himself within the jurisdiction of the court, still it is respectfully submitted that it is a circumstance proper to be considered by this court, in connection with the other more than suspicious circumstances connected with the alleged transfers of these judgments to plaintiff, in determining whether or not the parties to this suit have been improperly or collusively made or joined for the purpose of creating a case removable under the act of 1875.

This court in the case of Claflin *v.* Commonwealth Insurance Co., *supra*, opinion by Mr. Justice Matthews, submitted the following observations bearing upon this very question:

"It was, perhaps, with foresight of possible practical inconveniences to result from the extension of the right of removal effected by the act of 1875, and in order to furnish means for preventing evasions of the limits of the jurisdiction of the courts of the United States under the forms of law, that in the fifth section of the act it was provided that if it shall appear to the satisfaction of said Circuit Court, at any time after such suit has been brought or removed thereto, that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said Circuit Court, or that the parties to said suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this act, the said Circuit Court shall proceed no further therein, but shall dismiss the suit or remand it to the court from which it was removed, as justice may require."

In view of all the facts and circumstances of this case, it is respectfully submitted that in the event this court should retain jurisdiction of this case, the decree of the court below, in so far as it relates to the conveyance to William Crawford, should be reversed, and affirmed in so far as it relates to the conveyances to John A. Crawford.

JOHN H. MITCHELL,
Attorney for William Crawford,
and John A. Crawford.

Office Supreme Court U. S.
FILED,
JAN 20 1892
JAMES H. McKENNEY.
CLERK.

In the Supreme Court

OF THE

UNITED STATES,
OCTOBER TERM, 1891.

William Crawford,
Appellant,
vs.
Charles A. Heal, No. 156.

Charles A. Heal,
Appellant,
vs.
John A. Crawford and Ashby Pearce, No. 278.

Appeals from the Circuit Court of the United States for the District of Oregon, 1888.

Brief for Charles A. Heal.

Geo. H. Williams,
C. E. S. Wood,
Attorneys for Charles A. Heal.

PORTLAND, OREGON:
F. W. BALTES AND COMPANY, PRINTERS, 28 OAK STREET.
1892.

In the Supreme Court

OF THE

UNITED STATES,
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William Crawford,
Appellant,
vs.
Charles A. Veal, No. 186.

Charles A. Veal,
Appellant,
vs.
John A. Crawford and
Ashby Pearce, No. 278.

Appeals from the Circuit Court of the United States for the District of Oregon, 1888.

Brief for Charles A. Veal.

Our theory of this case is that Foster, frightened by the sudden and continued decline in the price of flour, and having already received large

advances from Sibson, Church & Co. and the Bank of British Columbia, and being uncertain just where it was going to end, took early steps to protect himself by secreting his property with the Crawford brothers, John and William. This theory we will undertake to prove to the court.

In the beginning of the case it was also a part of our theory that the indebtedness to Ashby Pearce and the indebtedness to the Bank of British Columbia, upon the joint note of Foster and Crawford, were liquidated by Foster's own money, and not by Pearce and Crawford individually.

But we desire to be entirely candid with the court, and to give it no more labor than is necessary; so we will say that we ourselves do not believe that we have successfully established this portion of our theory, and we shall consider the case upon the assumption that Pearce himself paid the note due at Connor's Bank in Albany, and that Crawford paid the note due to the Bank of British Columbia in Portland. But we will show that the other notes between Crawford and Foster, which passed as part of the consideration of this fraudulent transfer, were clear and palpable revivals of the old and settled accounts that had been adjusted between Foster and the Crawfords as long ago as 1876.

We shall also show that *William* Crawford, from the very beginning, has been a mere figure-head and has never transacted any business for himself,

that even the original sale of the mill to Foster was managed by John Crawford, and that William Crawford has never appeared in any of the business transactions between these men.

We shall claim the law of this case to be:

1. WHERE A CO-GRANTEE, THOUGH HE HIMSELF ACTUALLY PAID A VALID CONSIDERATION FOR HIS SHARE OF THE PROPERTY CONVEYED, YET KNEW THAT THE PROPERTY SO CONVEYED TO HIS CO-GRANTEE WAS UPON A FICTITIOUS CONSIDERATION AND FRAUDULENT, THE ENTIRE TRANSACTION MUST BE SET ASIDE.

2. A CONVEYANCE MADE TO SECURE A PORTION OF THE PROPERTY TO THE GRANTEE UPON A VALID CONSIDERATION, BUT INTENDED TO COVER THE RESIDUE OF THE PROPERTY FOR THE DEBTOR, IS VOID AS TO THE WHOLE.

ARGUMENT.

I.

AT THE TIME OF THE TRANSFER OF THE BRICK BUILDING TO WILLIAM CRAWFORD, FOSTER WAS NOT INDEBTED TO HIM AT ALL, AND THE OSTENSIBLE CONSIDERATION, THE NOTES GIVEN FOR THE ORIGINAL PURCHASE PRICE OF THE MILL (EXHIBITS 6 AND 7) HAD BEEN PAID LONG BEFORE.

Page 116, Foster says:

The price paid for this property was $16,000, to the best of my recollection, or the price that was to be paid. My brother and me purchased the mill property together, paying for it, I think, $16,000. *We gave a*

mortgage on the mill and a brick house for $10,000 of the purchase price. I purchased his interest from him, I think, in 1876. From that time on I was the sole proprietor of the Magnolia mills.

Page 214, Foster says:

We purchased the mill of Crawford in 1867.

Page 229, he says:

I purchased the mill from Mr. Crawford in 1867, and continued to February, 1884.

(This latter date was the date of the fraudulent transfer.)

Page 229, he also says:

I purchased the mill from *John A. Crawford*, but the deed, if I remember right, was made out by William Crawford.

Page 231, he says:

Q. Were you clear of indebtedness at the time you bought the mill from Mr. Crawford?

A. I think I *was*, without it might have been some *small* amounts.

Page 231, he also says:

That of the $16,000 paid for the mill, $6,000 was paid in cash, and the $10,000 balance due, was left in the shape of *five notes of $2,000 each.* (Exhibit 7.)

Page 232:

He gives the interest paid on those notes; by which we see that the last apparent interest payment was in 1881. and the last before that in 1875.

Page 233:

Foster states that these notes were surrendered, and other notes given in exchange,—five notes of $2,000 each, to correspond to the original note, and one of $6,000 for the interest that was due. (Exhibit 6.)

Page 234, he gives his reason for this exchange of notes as follows:

A. Mr. Crawford and me had a conversation about these notes, number "7;" in the conversation agreed to take notes from me for that mortgage, and reduce the interest to eight per cent., and he would not charge me any interest on the interest that had accrued on the notes, and I agreed to pay the taxes or not take these notes out of my indebtedness, and I executed those notes and delivered them, six of them, in the name of William Crawford, and delivered them to John A. Crawford, and John A. Crawford delivered to me these five notes, Exhibit "7," and agreed to have the mortgage cancelled.

On page 313, Mr. John Crawford states as follows:

Q. You may state whether or not you have been acting as agent for your brother William.

A. Yes, sir.

Q. How long?

A. Well, *ever since the time he came to this coast*, which was in 1854, and up to the present time.

Q. Have you transacted all or nearly all of the business for him?

A. I transacted it all. He scarcely transacted any business at all.

Q. You may state whether you acted as his agent in this purchase.

A. *I did.*

Q. You may state whether or not you took the notes marked Exhibit "6," as his agent, or whether he did the business himself.

A. I took the notes and did the business for him.

Q. You may state whether or not you took the notes marked Exhibit "7," and did the business in connection with them.

A. I took them. I sold the property and took them.

Q. You may state what was the consideration of the notes marked Exhibit "6;" what they were given for.

A. The conideration of the notes marked Exhibit "6" was five notes marked Exhibit "7," which were surrendered for those six notes.

Page 314, John Crawford states that the reason for the exchange of the notes was that Foster had agreed to pay the taxes on the notes, "being as they were issued at a less rate of interest," and on the same page he reiterates as follows:

Q. What was the arrangement that was entered into about the taxes by John Foster and James H. Foster?

A. Well, the taxes on them was to be paid by —— Fosters.

Q. What consideration in the reduction of interest, if any, was made to Foster in payment for the taxes by him?

A. There was two per cent.

From the foregoing it will be seen that the *object* of the exchange of one set of notes for the other, if defendant's story is to be accepted, was that Foster *was to pay the taxes on the notes*, in consideration of which the interest was reduced from 10 per cent. on Exhibit 7 (see page 527) to 8 per cent. on Exhibit 6 (see page 526).

Apparently, then, Foster was assuming an additional burden in consideration for his interest being reduced. Yet on page 234 Foster says:

Q. Who had been paying the taxes on the *old notes*?

A. *I had.*

Q. How long?

A. I think I paid the taxes on them *ever since I gave them. I know I have paid on them ever since 1876.*

Therefore, as he had been paying taxes on the old notes, the ostensible reason for giving the new ones and getting a lower rate of interest fails.

On page 234, Foster is unable to state just where these new notes (Exhibit 6) were drawn up, nor can he state how the matter came up at all.

Q. What reason have you for dating them back, if there is a possibility that they were dated back?

A. I don't know that I could give any reason positive for that.

So that, thus far, neither Crawford nor Foster seem to have any very clear idea just why a new set of notes originated in 1883. (Exhibit 6).

The court will remember that the original five notes (Exhibit 7) were secured by a mortgage on the mill.

THESE NOTES WERE ADMITTED BY ALL THE INTERESTED PARTIES—FOSTER, JOHN CRAWFORD AND WILLIAM CRAWFORD—TO HAVE BEEN PAID LONG BEFORE THE FRAUDULENT TRANSFER.

Page 118, C. H. Stewart, County Clerk for Linn county, Oregon, testifies that the mortgage tax law of Oregon went into effect in the year 1883. He says:

In making up the abstract of the mortgages I found one in favor of William Crawford. I think it was against Mr. Foster, for something like twenty or twenty-five thousand dollars, with interest.

On page 120 the same witness explains:

When I said twenty or twenty-five thousand * * I took the principal and added all the accrued interest, and it amounted to somewhere between twenty and twenty-two thousand. It seems to me now that the original amount was only ten thousand, if I am not mistaken.

Page 118, he says:

I sent a postal card to Mr. Crawford, telling him that I had found this mortgage, and for him to call and either make credits, if there were any, or cancel it before I had to make my final report to the assessor.

He continues:

A. He called and cancelled the mortgage. I do not remember the exact conversation, but the purport was *that it had been paid off several years before*, and that he had no knowledge of it being upon the books of record.

Q. John Crawford was it?

A. It was William.

Page 120, Mr. Stewart says that the mortgage was in favor of William Crawford by John H. Foster.

Q. Upon what property was it given?

A. Upon the *mill property*, Magnolia Mills, in Albany, Oregon.

Page 145, Mr. John A. Connor, the principal banker of Foster's town, Albany, Oregon, testifies as follows:

Q. Are you acquainted with J. H. Foster, of Albany?

A. I am.

Q. Have you done business with him during the time you have been running the bank, more or less?

A. Yes, sir.

Q. Did you have a conversation with Mr. Foster during the time that you have been engaged in banking in reference to a mortgage for something like $10,000 given by him to William Crawford upon his mill property?

(Objection by Bronaugh as incompetent and immaterial).

A. Yes, sir.

Q. Please state what he said, if anything, in reference to the same being paid, and, as near as you can, the time?

A. I did not refresh my memory with the books before I came down. My impression now is that it was the latter part of 1879 or fore part of 1880, but it might have been 1878—between '78 and '80. I think I spoke about that mortgage, *and he said it was paid.*

Q. What object had you in enquiring of Mr. Foster whether or not the mortgage had been paid?

(Objection by Bronaugh, same as last above).

A. He was owing me quite an amount at that time, and the cashier, in looking over the records, found it was not cancelled; that was the ground or reason that I asked in reference to it.

So that long *before* the mortgage tax law *was passed*, and before any of the now alleged reasons existed, Foster says that the mortgage is paid.

The court will note that the two principals of this transaction unite in saying, in such a way, that there can be no mistake about it, that the mill notes *had been settled and paid.*

It is not said that the mortgage is to be removed from the property, but that the entire debt has been settled and paid.

Mr. Connor is one of those men, of rare accuracy and integrity, whose word is accepted by those who know him as absolutely conclusive; and Mr. Foster, when examined by his counsel, does not contradict a single syllable of Connor's statement. He says that he does not recollect the conversation, and adds (page 232):

Q. Do you undertake to say that you never made such a statement as that to Mr. Connor?

A. I have never said that I never make such a statement, but I have no recollection of ever making such a statement.

Page 180, Mr. Monteith testifies that *John* Crawford, William Crawford's superior self, said to him in 1883, not long before the fraudulent transfer, that the mortgage was paid off and settled long ago, as follows:

Q. Was there anything more said in that conversation?

A. Well, as I said, I believe he stated that Foster seemed to be getting along and making money. Well, I said, "if he is getting along so fast, why don't he pay off the mortgage that has been on record there ever since he bought the mill." "Why," he said, "that mortgage was paid off long ago.

On page 191, Exhibit "F" shows the mill "Mortgage satisfied in full and cancelled this July 31st, 1883. William Crawford. Attested: C. H. Stewart, clerk."

Page 125, Mr. Anderson testifies as follows in regard to a conversation with John Crawford, not very long before the transfer:

A. I asked him if he had anything to do with that mill now, and he told me: "Oh, *that is all settled*; I have nothing more to do with that mill than you have."

We claim:

1. That we have a right to accept the statements of all these disinterested witnesses rather than the statements of the defendants.

2. That it is impossible that all of these witnesses, responsible and careful business men, could be mistaken in what was said to them by the Crawfords and Foster respectively, regarding the payment of the mortgage on the mill.

3. That as between what the defendants said long prior to this suit, when there was no motive to conceal the truth, and what they now say, we have a right to hold them to their former admissions and assertions.

THE COURT WILL REMEMBER THAT THE PRINCIPAL ASSET OF FOSTER WAS THE MAGNOLIA MILLS.

Page 208, Foster states that he went to a money lender to get $15,000, and offered the best security.

Page 209, he gives a conversation with Crawford, in which, he says, Crawford first spoke about

taking a *mortgage* to secure certain notes to different parties, which he (Crawford), had signed as security for Foster.

It seems strange that in all this conversation nothing was said about the *indebtedness on the mill*, if it actually existed at that time, as claimed.

On page 275, Mr. Foster says:

Q. Did you propose to give them (the money-lenders) a mortgage on your *mill*?

A. I proposed to give them a mortgage *on anything that they required.*

Page 277, he is asked:

Q. Did you expect to mortgage your property if you could get the money, and *leave the Crawfords out* with the others?

A. I expected to *mortgage my property if I could have got the money.*

One of two conclusions is inevitable; either Foster was willing to swindle the Crawfords by mortgaging the mill, which was under an equitable obligation to them for the unpaid purchase price; or there was no such equitable obligation, and he was free to deal with the property. All his conduct points to the latter conclusion.

To the foregoing we add the following documentary evidence:

Page 472, Exhibit "E"—William Crawford's sworn statement of his indebtedness in the year

1881, in which the *entire amount of notes* due to him is returned at *$5,000;* whereas, at that time, if his statements be accepted as true, Foster was owing him, on the mill property alone, $10,000 principal, and nearly as much more interest.

With the mortgage on the mill cancelled of record, of course the defendants must seek some explanation. The one which they offer is, that in order to avoid taxes, the mortgage was to be cancelled, and Foster was to pay the taxes on the notes, for which reason the interest was reduced from ten to eight per cent. on the exchange of the notes Exhibit "7" for Exhibit "6." But we see that William Crawford did *not* cancel the mortgage until he was sent for by the County Clerk and asked concerning it. So that the very reason for all this re-delivery of notes does not seem to have been of sufficient importance for Crawford to have remembered to cancel the mortgage at the time the notes were exchanged, nor for Foster to see that he did so.

II.

THERE WAS NO INDEBTEDNESS DUE FROM FOSTER TO CRAWFORD AT THE TIME OF THE FRAUDULENT TRANSFER, EXCEPT THE NOTE PAYABLE TO THE BANK OF BRITISH COLUMBIA.

Mr. Foster continually lays stress upon the fact that what gave him the most trouble, and caused him the greatest anxiety, was the fear that he had

ground up wheat not his own property, stored with him by farmers, and that he would be sent to the penitentiary on this wheat shortage for embezzlement.

It matters very little, of course, whether this fear was well founded or not, as a point of law, provided Mr. Foster in good faith entertained it. But we will undertake to show that he did not.

On page 207, in giving an account of the alleged consideration, Foster states that Crawford paid him in notes "that he held against me, my notes; and he paid notes off that he had endorsed for me to different parties; and he was likewise to purchase and make good, to parties who held my receipts for wheat that was in store, something near 20,000 bushels of wheat that I was short in the warehouse."

It is proper here to call the court's attention to the fact that nearly all of this consideration consists of notes, which, as the books say, are easily manufactured; and that what is not made up of notes consists of purchasing a wheat shortage, which is also easily manufactured, and *no sufficient vouchers for which are shown.*

If Crawford, on Foster's account, paid farmers for 20,000 bushels of wheat, *he should have something to show for this disbursement.*

On page 212, in enumerating the consideration paid by John Crawford, Foster mentions a note to

the Bank of British Columbia for $5,000 (Exhibit 8). This is undoubtedly a genuine note; and whether it was paid off by Crawford's own money or Foster's we have not been able clearly to show.

He also refers to two notes, one payable to John Connor, and the other to the First National Bank at Albany, amounting to $16,000 in all. (Exhibit 9). These notes are undoubtedly genuine, so far as their execution is concerned.

These three notes cover all of the *bona fide* indebtedness that by any stretch of courtesy we are willing to allow to exist between Foster and Crawford.

On page 213, Foster says that he was owing to Crawford three notes, as follows:

A. First, the amount of $3,000, dated September 12th, 1878; second, the amount of $8,605, dated April 28th, 1876; and, third, the amount of $5.325, dated April 28th, 1876.

(Exhibits 10, 11 and 12 respectively).

Page 214, Foster states that the note for $5,325 was given in lieu of two notes for $3,000 and $2,000 respectively, dated July 20, 1875 (Exhibits 13 and 14), and that the note for $8,605 was given in lieu of a note for $7,593. (Exhibit 15.)

He is unable to say what was the consideration for any of these notes. (See bottom of page 214.)

Page 215, Foster states that Crawford became responsible for a wheat shortage of 19,541 bushels. And on page 216 he explains that some of this wheat was purchased and that for other portions of it Crawford gave his receipt; and on the same page he states that he bought some of the wheat himself, but paid for it with Crawford's money.

We need only suggest to the court how easily frauds could be practiced in this manner by Foster using his own money simply to purchase the wheat in Crawford's name, and exchanging his old receipts for Crawford's.

Page 246, Foster states that a further part of the consideration was the note of Frank Parton, formerly miller for Foster. This was a note for $4,810. (Exhibit 16.)

This man Parton was a confidential friend of Foster and his miller, and the note purports to be for wages and for money loaned. Such a transaction between master and servant, and such an accumulation of wages, seems suspicious, to say the least.

Page 217, the final item of consideration Foster states to be $5,803.50, on open account, either for wheat or money, or water rent; but under cross-examination, Mr. Foster is utterly unable to make it up from the books.

This is the story as told by the defendants in this suit.

At a prior time, when they would be more likely to tell the truth, we find grave contradictions.

It will be noted that the genuine notes to the Bank of British Columbia and Connor's Bank at Albany were all dated just before the fraudulent transfer in 1883 and 1884. (Pages 529 and 530 of the record.)

The fraudulent, or revived notes, as we must term them, are dated, as between Crawford and Foster, in 1875, 1876 and 1878. The large note from Foster to Parton, his miller, is suspiciously dated just three days before the fraudulent transfer.

NOW, CRAWFORD ADMITS, AS LATE AS 1882, AND LONG AFTER THE DATES OF THE NOTES BETWEEN FOSTER AND CRAWFORD, THAT FOSTER OWES HIM NOTHING.

Page 150, W. H. Goltra testifies that in June, *1883*, he had the following conversation with Crawford:

A. I asked Mr. Crawford as to Mr. Foster's financial standing and what interest he owned in Foster's mill. His reply was that "I own no more in the mill than you," or words to that effect. I then remarked that some thought that Foster owed him considerable or he had an interest in the mill. He further replied, "*He neither owes me* nor have I any interest in the mill." That might not be his exact words, but that is the substance.

Page 156, Dr. J. L. Hill testifies that about *1883* Crawford told him that *at one time* Foster owed him

either twenty or twenty-four thousand dollars, but that *now* he was as good as anybody, as far as he knew. And on page 156, Dr. Hill states that Crawford told him Foster *had paid it* and *did not owe him anything now.*

Page 175, Mr. E. T. T. Fisher, foreman of the grand jury in the year 1882, testifies that Mr. Crawford was indicted for perjury in making his assessment returns, and that they examined Mr. Crawford and he *stated that Mr. Foster did not owe him.*

Pages 182 and 183, Mr. George E. Chamberlain testifies as to how the assessment return by John Crawford (Exhibit "D," just after page 472 of the record,) was made out, and says that the amount shown on that assessment, $5,500, was the amount *told him by Crawford* as the aggregate of the accounts due him in money and notes. This assessment return (Exhibit "D,") is signed by John Crawford himself, under oath, and shows the aggregate amount of notes due him as *$5,500.*

Page 185, Mr. H. S. Williams states that he was the assessor who asked Crawford if $5,500 was all the money, notes and accounts due him, and he told him *it was.*

Mr. F. M. Daniel, a member of the grand jury for the year 1882, (pages 191 and 192,) testifies that Crawford was asked "Does not J. H. Foster owe

you a certain amount of money?" to which he replied that he (*Foster*) *did not owe him* (*Crawford*) *anything.*

Q. Mr. Crawford said that Foster did not owe him anything?

A. He stated that Mr. Foster did *not owe him anything.*

Page 235, Foster testifies that in 1876 he and the Crawford brothers had a settlement, which fact is attested by the books. Foster says that the settlement was complete, and was effected by his delivering to Crawford good notes "in all amounting to over $20,000, and he delivered up notes enough that he held against me at that time for to amount to that amount, with statements on the books."

Further on, on the same page, he examines the books and goes into details as follows:

A. I can tell by looking at the books. (Witness consults the books.) The amount of money that was paid to Mr. Crawford at that time was a draft on Allen & Lewis. It was for $4,326; a note turned over to him on Elkins and others for $5,000, with interest on it to the amount of $572.75; another note on Elkins and others for $8,000—Elkins, Looper and others; John Ganter's name appears there for $2,586.66; and a note on Elkins and others for $1,054.40; another note on Elkins and others, for $1,250.40, an order on the Albany & Santiam Ditch Co., for $226.40; and this draft on Allen & Lewis that I spoke of before—in all,

making $23,016.67. Mr. Crawford turned over to me a note that he held against me for $13,000 principal and $650.00 on it as interest; another note of $8,000, with $1,366.00 on it as interest, making $23,016. That is the amount of money and business, as respecting the Water Ditch Co., that was made from Lebanon to Albany, Mr. Crawford loaning these amounts of money to me—the $13.000 and $8,000—and I lent it to the company.

Foster testifies that this settlement was effected as a preliminary to his going away to the Centennial Exposition. It seems strange that in such a settlement, *where an amount of cash was paid to balance the accounts and make a complete adjustment*, defendant's Exhibits 14 and 15, all of them over-due at the time of the settlement, were not incorporated in that settlement, *if* they were still unpaid. And the same remark applies to Exhibits 11 and 12, each of them dated April 28, 1876.

But Foster says that these notes, Exhibits 11 and 12, were given in exchange for three other notes and the accrued interest. What the three other notes were for, or where they now are, he is unable to explain, and an examination of the books *nowhere discloses the entry of any such notes*—nor, for the matter of that, of these notes now in evidence.

The lack of any record of these notes in the account books, the failure of Foster or Crawford to

explain for what account they were given, and the reiterated statement of Crawford, as late as 1882 and 1883, that Foster owed him *nothing*, should be conclusive against these men in this case.

III.

BETWEEN THE TIME OF THE ACQUISITION OF THE MILL PROPERTY IN 1867, AND THE FRAUDULENT TRANSFER IN 1884, FOSTER EXPENDED VERY LARGE SUMS OF MONEY, AND THE ACCOUNTS ON THE BOOKS SHOW THAT THE CRAWFORDS FREQUENTLY PAID FOSTER MONEY, WHICH IS INCONSISTENT WITH THE FACT THAT NOT EVEN THE INTEREST ON THE MILL NOTES, EXHIBITS 6 AND 7, AND THE JOHN CRAWFORD NOTES EXHIBITS 11 AND 15, WAS PAID.

The account of the Crawford brothers will be found on page 105 of Ledger D, carried thence to page 438 of Ledger D, thence to page 120 of Ledger E, thence to page 224 of Ledger E, thence to page 275 of Ledger F. Bills Receivable will be found on pages 94 and 95 of Ledger G. In none of these places, as we have said before, do Exhibits 10, 11, and 12 appear. In none of them are notes to be found due to Crawford amounting to more than $6,000 in the aggregate. Quite frequently, in the account of the Crawford brothers payments of *cash to Foster* are found for mill stuffs and other supplies.

Page 256, Foster admits:

Q. Did you make any record of them in 1883 on your books, when you gave the new notes that you now claim you gave for the mortgage notes?

A. I think there was *no record* made of it; I think they were just made and delivered over to Mr. Crawford and he delivered up the other notes.

Q. Any record made of the other notes, the $8,000 and the $5,000 and the $3,000, that have been offered in evidence?

A. I could not say.

Q. Don't you know that there was no record made of them?

A. That is my opinion, that *there were not.*

Q. Is it not true that you made a record of all the other notes that you have given on your books up to the day before you made the assignment to Crawford of your property?

A. I am not positive as respects that; it was generally intended for to keep a record of the notes.

Q. Would you have any objection to examining the books and see if they are recorded in the bills payable and receivable?

A. What notes are you referring to now?

Q. The $8,000 and the $5,000 and the $3,000, marked 10, 11 and 12, heretofore offered in evidence in this case.

(Objection by Flinn that the books themselves are the best evidence.)

A. I am not positive about the $3,000 note, but I don't think those marked 11 and 12 that there is

any record made of them at the time they was given; I am not positive about the 10.

Q. Did you charge them or make any minute of them on Crawford's account?

(Objection by Flinn, same as above.)

A. As I before stated, they was given in the place of other notes that was taken up, and, as I before stated, there was no record made of those notes.

Q. You kept account of the notes that you had given to Mr. Conner and other persons with whom you did business in Albany in your books, did you not, at that time?

A. That was the calculation, and I presume we did.

Q. But you made no mention of those notes on the books?

A. I don't think there was any record made of them.

Q. You did have other transactions about that date, did you not?

A. *There was other transactions about the same time that there was a record made of.*

Q. I see the last date that the interest or any payments was made as marked on either of the notes numbered 11 and 12 is April 27th, 1878. Was any payment demanded of you after that time up to the 6th day of February, 1884, by Mr. Crawford, or did you pay any interest or principal from that time up to the 6th of February, 1884?

A. I have no recollection of Mr. Crawford demanding payment from me on the notes.

Q. You were building large brick blocks, water works, and doing a large business in the milling line and had funds with which to transact all the business and yet you pretend to say that you did not pay the interest or any portion of it that was due upon those notes marked 11 and 12 did you, for the space of *six years?*

A. The amount that I paid on them notes is endorsed on them

Page 254, Foster says:

Q. During the time that you were in business last, did you at any time make more than your running expenses?

A. Some years I made a very nice profit, and some years I met with very heavy losses.

Q. What other sources did you have?

A. I had some rents.

Page 255 (Foster):

Q. Did you own an interest in the Santiam Ditch Company?

A. I once did.

Q. You built the Albany Water Works, did not you?

A. I had. I went in with Mr. Crawford to construct the Albany Water Works.

Page 254:

Q. Did you have the money to build the brick block in Albany, referred to in this testimony?

A. I built that brick block and borrowed the money. Probably I had some at the time that I took out of the business and invested in it.

Page 302, Parton, the miller, testifies that seven or eight thousand dollars were expended for waterhouse's work; that there were extensive repairs every year; that a large amount of new machinery and a foundatinn was put under the mill the year Foster purchased it; and that in 1878 a new front was put on the mill and a warehouse erected.

Pages 291 and 292, Foster testifies that in improvements on the mill from time to time, and in changing from the burr system to the roller system, he had expended in all, on the mill, about $40,000.

It seems incredible that he should have expended this amount of money on the mill—should have been engaged in erecting brick buildings and constructing water works—without even paying interest on the notes for the purchase price of the mill, and the other notes alleged to be due John Crawford.

IV.

FOSTER REMAINS IN POSSESSION AND EXERCISES ACTS OF OWNERSHIP AFTER THE TRANSFER.

Page 122, Thos. I. Anderson testifies that Foster was in the office as usual.

Page 123, he says Foster told him he had not sold the mill; that he had merely turned it over for the safety and benefit of his creditors and himself.

On the same page he says:

A. He said that if it was sold now it would be sacrificed for a low figure, but that he expected to pay every dollar when it was disposed of, if he did.

A. He said that he had not sold at all. He said that he expected to pay every dollar that he owed.

Page 127, he says:

A. No, sir; he scouted the idea of selling to Mr. Crawford; that he had only turned it over to Crawford for the safety of himself and creditors. Besides, if Mr. Crawford should sell the mill he would have enough to pay all his debts. I said, "Mr. Foster, I have known some difficulty about that, if a man turns his property over to save himself from creditors;" and he said, "*I can trust John.*"

Page 129, Mr. J. G. Powell says:

I found Mr. Foster in the office as usual:

Q. When was it?

A. A few days after the transfer.

On page 131, he says that Foster was always in the office and that he always transacted business with Mr. Foster.

Q. State what was said or done by Mr. Foster in that conversation in reference to the settlement of the Ramsey matter?

A. Well, I was trying to get some money for Ramsey, and he said he expected and would pay that account off as soon as he could. He said, "I have plenty of property, but it is in hands—that I cannot use it now" —was his words as near as I can give them.

Page 137, Wm. V. Baltimore testifies:

A. Well, some time after the transaction—I don't know just when—I wanted some feed, and I went and got it and paid the man that was in there, and then after I came out I thought he was owing me and maybe it would be all right, and I went to him and asked him if he intended me to pay for that feed, and he said, "*No, I don't,*" and he went down and told Mr. Beam to ***pay it back*** *to me.*

Q. Did he pay it back?

A. *Yes, sir.*

Page 138:

Q. What did he (Foster) say, if anything, about putting his property out of his hands?

A. He said that he had to do it to save his property; to save it from selling for nothing, I suppose.

Page 139:

A. I don't think I heard him say it in that way, I heard him say that if wheat livened up again that he could pay his debts; that he had made a hundred dollars a day clear in the mill, and that he could do it again.

Page 140:

Q. Who did you see in the mill?

A. Just the hands that had been there in the fall; the mill hands and Mr. Foster in the office.

Page 144, Mr. V. H. Caldwell testifies:

Q. Was Foster about the mill at that time?

A. Oh, I saw him about the mill at that time.

Q. Did you see him in the office?

A. Yes, sir; I saw him in the office sometimes, sometimes about the mill and sometimes about the warehouse.

Page 149, John Chriswell testifies that Crawford was as much around the mill before the transfer as he was afterwards, and that Foster remained in possession and control as much afterwards as before.

Page 152, W. H. Goltra testifies:

A. That was in reference to the storage of wheat. He (Crawford) said that what Mr. Foster had promised would be carried out; that Mr. Foster was all right if the people only understood him, was his language.

A. Mr. Foster seemed to be doing business at the mill, and solicited the storage of my wheat, and said there should be no storage on wheat stored with him or with us, I think was the words used. This conversation with Mr. Crawford was the same day, and after that I wanted to know if he agreed to that proposition.

Q. What was his answer?

A. His answer was that whatever Mr. Foster had promised would be carried out, for Foster was all right, if the people only understood him.

Q. Who was transacting the business in and about the mill?

A. Mr. Foster, so far as I could see, had control.

Page 159, Mr. J. O. Goltra testifies that he overheard the same conversation; that the proposition that Foster made was that the wheat should be stored *free of charge*, "and father asked Mr.

Crawford concerning it, if it was all right, and he said that whatever agreement Mr. Foster made it was all right."

Mr. Crawford is not the man to store wheat free of charge in his *own* warehouse.

Page 161, G. Matasce testifies that Foster said to him, "If you do not put me to any expenses and let me run the mill in Crawford's name," he said he could run it. "Somebody below will break me up—will ruin me. I have got enough to pay every cent I owe if they will let me alone and not put me to any cost."

On page 163, he testifies that Foster bought some wheat from him and gave him a check on the bank.

Q. In whose name was the check?

A. In Mr. Crawford's name. I asked him why he did not give the check in his own name; and he said, "I have to do business in Mr. Crawford's name until I get everything settled up."

Page 165, he says:

A. He told me this: When I told him that I wanted to see about getting sacks of him I told him that I wanted to store there provided there would be no storage on the wheat that remained there, and if he was going to charge me second storage, why, I would not store there, and he said: "I charge no second storage, and you can get all the sacks you want." And he spoke like this: "I am

going to run it," or I won't be certain but he said "we." He said: "I am going to run it" or "we are going to run it and make all we can out of it."

Foster's alleged reason for the transfer was that he feared the penitentiary on account of his shortage in the wheat stored with him; but his acts are inconsistent with this.

Pages 208 and 209, Foster says that he feared the penitentiary on account of the shortage in wheat; yet, according to his own showing, there was less than 20,000 bushels of wheat short, and $10,000 would have been enough to have protected him against that amount without stripping himself of every particle of property he possessed on earth. Moreover, *within two or three days* of the transfer he was trying to buy some wheat at a rate higher than the market price.

Page 121, Mr. Anderson testifies that he had wheat stored in Foster's warehouse at the time of the transfer.

Page 128, he testifies that two or three weeks before the transfer Foster offered him 93 cents for wheat.

Page 129, he tcstifies that the market value of wheat at that time was 90 to 91 cents.

In this Foster also agrees with him. (Page 240.)

Page 238, Foster himself testifies that he bought the Hurlburt boys' wheat five or six days before the

transfer to Crawford, and gave them his note for it the *very day* before the transfer.

Page 239, Foster says that wheat was as high as 90 cents.

Q. Did you not testify in the Circuit Court of Linn county, before Judge Boise, that you paid as high as 96 cents or 97 per bushel for wheat a short time before you made the assignment to John Crawford?

A. I presume I paid that high for wheat. I don't remember what I testified to at that time.

V.

FOSTER REMAINS IN THE SAME DWELLING HOUSE WHICH HE OCCUPIED BEFORE THE TRANSFER, FOR WHICH HE PAYS NO RENT. HE RECEIVES FROM THE MILL ALL THE FLOUR, ETC., REQUIRED FOR HIMSELF AND FAMILY, AND ALSO CASH, FOR ALL OF WHICH NO CHARGE IS ENTERED IN ANY OF THE BOOKS.

We will not amplify the testimony under this head, because enough is obtained from Foster himself.

Pages 220-221, he states:

A. After I had sold this property to Mr. Crawford, I told him that I would like to remain in the house; that I would like to keep it for a while, and he asked me if I would not just as well have the Drigs' house—another house that he had, and I told him that I would rather have that house; that I would rather live there, and he has let me live there ever since.

Q. Well, what did you do about the rents?

A. Well, he never told me what rent he was going to charge me for the house and——

Q. Well, what did you tell him about doing what was right about it, if anything?

A. Well, at the time I told him about renting the house, I told him that I was willing to do what was right, so far as was in my power, towards compensating him for the house.

Q. Have you remained in that dwelling house ever since?

A. I have remained in the house ever since.

Q. What have you paid Mr. Crawford, if anything?

A. I have not directly paid him.

Q. Have you indirectly?

A. To my *knowledge I* have not paid him.

Q. You may state how long you remained in Mr. Crawford's employ after the sale.

A. Well, I have been in Mr. Crawford's employ *ever since the sale.*

Pages 266 and 267, he states:

Q. You staid there in the office and collected up the accounts?

A. Yes, sir.

Q. How much was Crawford to give you for that as a rule?

A. *I think* I have received something like $75.00 a month.

Q. Did you make a bargain that night as to what you were to have before the power of attorney was drawn?

A. I don't remember now that there was anything said that night, but afterwards there was an agreement that I was to get $75.00.

Q. Was anything at all said about it that night?

A. I don't remember that there was.

Q. When did you have a conversation as to what you were to receive?

A. I don't remember now; it was before the month was up.

Q. Did he pay you the money?

A. He has paid me the money sometimes, and sometimes he did not. *I got it in other ways.*

Q. Who collected other moneys that came into the office? Did not you take your salary out of that in the place of going to Gray?

A. The money that I collected on them accounts as a general thing was all paid out on the wheat.

Q. You could not save $75.00 a month out of it on your salary?

A. I suppose I could have done it; but I have told you how it was.

Q. Did you always receive $75.00 a month?

A. I don't think it was always $75.00; but it was never over $75.00.

Q. Did you give receipts for it?

A. *No, sir.*

Q. Did Crawford keep an account of it?

A. I don't know about that.

Q. Was you not there in the office and had charge of the books in settling up his accounts.

A. I don't think I did.

Q. Did you make an account of it on your books?

A. *No; I never made an account of it.*

Q. Did you ever get more than $75.00 in any one month?

A. I don't remember of getting it.

Q. Have you ever had a settlement with him for it?

A. *I have not.*

Q. Have you ever had a settlement with him for your house rent?

A. *I have not.*

Page 348, Crawford states:

A. I don't know what ones he had; he turned them off and I only engaged Beam and Gray at that time.

Q. Foster and Gray?

A. Yes, and Beam — three.

Q. *Gray is a brother-in-law of Foster's, is he not?*

A. I don't know; *I heard so.*

Q. Foster has been in there ever since, has he?

A. Occasionally he has been in there ever since.

Q. And you have been paying him ever since?

A. I have.

Q. How much a month?

A. Well, *about* $75.00.

Q. I did not ask you about how much.

A. *Well, I could not tell how much he did receive.*

Page 350, Crawford testifies:

Q. Did you deduct any money out of his salary to pay on the claims that you had paid out for him?

A. *I did not.*

Q. Did you deduct anything to pay house rent?

A. *I did not.*

Q. Did you deduct anything for flour that he got from the mill?

A. *I did not.*

Q. He had got flour there, hadn't he?

A. *I suppose he had.*

Page 351, Crawford testifies that he paid one claim to Mr. Pipes of $400 to Foster's account, which was not a part of his agreement with Foster.

Pages 269–270, Foster testifies:

Q. Did you not state in your chief examination that Mr. Crawford employed you because you was a man that had large experience, and that he wanted a man of experience to manage his business?

A. I think I said that Mr. Crawford had been out of the business a long time and he wanted to have me to assist him and employed me for that purpose.

Q. And ever since that time you have been in his employ at $75 a month?

A. I have been in his employ since that time, and *I think* I have *generally* received about $75 a month.

Q. Did you apply any of that $75 towards paying off the amount that he paid to Flinn and Jim Pipes for you?

A. I have not.

Q. Did you use any of that $75 a month that you received towards paying the house rent for the house that you occupy that you claim belongs to him—Mr. Crawford?

A. . I have not.

Q. Did you make any credits or charges on the books or have any made about house rent?

A. I have not.

Q. Did you settle with Mr. Crawford in any way for the house rent?

A. Not to my knowledge.

Q. Did he pay you the $75 each month?

A. I think I have received about $75 a month; that is my recollection.

Q. Did you give receipts for the money?

A. I did not.

Q. Did Crawford ever pay you that money himself?

A. He has paid me part of it at times; whether he ever paid me the whole amount at one time himself or not I am not able to say. He has paid me part of it and told me to go to Gray and get the balance of it when he collected it.

Q. What relation is Gray, if any—Lorenzo Gray—to you?

A. *He is a brother-in-law.*

Q. Was he in your employ before you sold the mill to Mr. Crawford?

A. *Yes, sir; he was.*

Page 369, John A. Crawford testifies, in relation to the flour and feed, which Foster got at the mill after the sale:

Q. You never took it from the amount of wages you were paying him?

A. I never took it out.

Page 345 (Crawford):

Q. I asked what you were to give him.

A. I think it was $75 a month.

Q. Are you sure of that?

A. *Well, I think I am pretty sure.*

The court will note that neither Foster nor Crawford are sure as to exactly what his salary was to be; nor does Foster actually draw any fixed and uniform salary per month. And neither party keeps any book account of what Foster receives.

VI.

ALTHOUGH FOSTER CLAIMS THAT THE WHEAT SHORTAGE WAS THE ESSENTIAL CAUSE OF THE SALE OF THE PROPERTY, THE AMOUNT ACTUALLY PAID ON THAT ACCOUNT, EVEN BY THE DEFENDANT'S OWN CLAIM, IS ONLY $10,000, FOR WHICH NO VOUCHERS ARE SHOWN.

Page 346, Mr. John A. Crawford testifies:

Q. Wheat was worth more than fifty cents a bushel, was it not?

A. Yes; it was.

Q. What was the reason that you did not give a note for enough to secure that wheat?

A. Well, the reason was that some parties had drawn some money on their wheat, and some had got flour, and we did not know how much was owing on it.

Q. As a matter of fact, then, Foster was not short for that amount?

A. There was that amount of wheat receipts that was out, and he did not know how much was due on hem, and he said he thought $10,000 would pay for t

the short wheat, but he did not know; wheat was not more than fifty or sixty cents then.

Q. Did you know how much the counter-claims were that were due then?

A. *I did not.*

Q. Ever figured them up?

A. No, sir.

Q. You never made any estimates?

A. No, sir.

Q. And you never had it done?

A. No, sir.

Q. Never saw an estimate?

A. I never saw it, but I employed *him* (*Foster*) for to settle up with the farmers, and find out how much wheat was left.

Q. How much did you pay?

A. Well, I paid about $10,000 or more.

VII.

THE TRANSFER WAS MADE LATE AT NIGHT, AND WITH SUSPICIOUS HASTE.

Pages 259 and 260, Foster testifies:

Q. Did you make the sale the day the deeds were made?

A. That was the day we consummated the sale.

Q. Who was present at the time of the second conversation?

A. There was no person present at the time we talked it over nor the time the sale was made.

Q. John Crawford or William Crawford?

A. I made the sale to John Crawford.

Q. Did you examine your accounts to see whether—to ascertain how you stood; you and Mr. Crawford?

A. I made a calculation *about* what the amount of them was.

Q. Did you have those three notes present marked "10, 11 and 12"?

A. I think Mr. Crawford took a piece of paper and had the amounts set down on it that he said the notes and interest amounted to. I don't think the notes was present, to my recollection.

Q. What time of day did you have that conversation?

A. My opinion now is that it was in the fore part of the day that we talked that over particularly.

Q. When did you have the next conversation, if you had any more?

A. My recollection now is that it was not till the after part of the day that Mr. Crawford told me positively that he would take the property and comply with the proposition that I had made to him.

Q. The after part of the sixth of February?

A. Well, I would not be positive about the day being the sixth day of February, but that is what I would have to go by—the day the deeds was made out.

Q. Well, was it the day the deeds were made out?

A. That is my recollection.

Q. Can you remember any person that came in during the time you and Mr. Crawford were talking?

A. I don't remember of any person that came in at the time; it had begun to dusk. My recollection now is that it was late in the afternoon.

Q. Where did you next meet him after that on this business?

A. After we had completed the contract and concluded to have the conveyances made I went up to my house, and my wife and me came down to Judge Strahan's house, as he was going to make out the papers, and I think there was the next place that I saw Mr. Crawford.

Q. What time of the night did you go to Judge Strahan's house?

A. I think it was very near dark.

Q. Who did you find at Strahan's house when you arrived there?

A. I think Mr. Strahan was the first person I saw there. My recollection is now that Judge Strahan was lying on the bed. He said he had been very unwell that afternoon.

Q. How long after before Crawford came there?

A. I don't know how long it was.

Q. Which one, William or John A.?

A. I don't remember William being there; John was there.

Q. What time of night did you get through and leave Strahan's house?

A. I could not say positively what time of night it was, but I know it was a little on the late order when we got home.

Page 293 (Foster):

Q. What particular motive did you have for being in such a hurry to make the deeds to Mr. Crawford as to go down to Judge Strahan's house after night and remain there a great portion of the night in making out the deeds?

A. I had sold the property to him and he requested me to make deeds for it, and it suited me just as well to do it then as any time.

Q. I asked you if there was any other reasons for going down to Strahan's house that night and remaining a good portion of the night to make the deeds?

A. I owed other parties; I did not know what they would do about this matter; and, as I stated before, I could make the deeds then and secure this wheat, and I concluded to do so.

Page 342:

Crawford testifies that at the time of the transfer he never examined Foster's books, nor had any account been made out between them.

Page 331:

He testifies that he and Foster had never had a settlement between them from 1876 to the date of the transfer.

Page 332:

He testifies that he kept no books or record of the accounts between him and Foster.

Page 332:

He testifies that when he asks Foster for money Foster tells him he is short.

Page 332:

Q. When did you ask him for money and he said he was short?

A. Well, I could not say now; I never troubled him much for money.

While on page 256 Foster in contradiction says:

A. What I mean by being pressed, they never urged on me for money.

Q. They did not even speak to you about it?

A. If they did it was universally met.

Page 345, Crawford testifies that at the time of the purchase he took Foster's word for the amount of the wheat shortage and signed a note to secure him for it.

Page 357, Crawford testifies that in the purchase he allowed Foster $3,000 for his book accounts, but that he knew *nothing* whatever about them.

And on page 357 he continues:

Q. You bought them, then, without knowing anything about them?

A. I bought them—yes, I bought them without knowing anything about it.

Q. Whether it was $10,000 he had on the books or $500?

A. It might have been either, for anything that I knew. *I made no calculation.*

VIII

IN THE CASE OF THE GOLTRA NOTE FOSTER PLAINLY REVIVED AN OLD AND PAID NOTE FOR THE PURPOSE OF DEFRAUDING HIS CREDITORS.

Pages 433 and 434, W. H. Goltra testifies:

A. There was a note made and given to me shortly after the transfer—I don't remember the exact date—and it was given for the purpose of covering proceeds said to be in certain flour here in Portland, and it was given for the purpose of keeping it from being attached, if there were any proceeds, which he stated at that time there was over and above claims already against the flour. Some of the flour was afloat and some was here in the hands of the Bank of British Columbia. Mr. Foster seemed to think that there would be more in the proceeds of the flour than would pay my claim, and *he wished to have the disposition of that*, whatever there might be, over and above what was to pay me—that is, the disposition of it. I don't know what he was going to do with it, but that is what he said, *and he gave me a note that was a duplicate of a note that I had held against him the year before for wheat sold to him. The amount of the note, if I remember right, was about $2,750.* That note was written by his son, R. A. Foster—he was keeping the books at that time—and signed by James H. Foster, who was in the office sitting at the table, and his son was at the desk—Mr. R. A. Foster—*and the note was entered on the journal in my presence.*

Q. On whose journal?

A. Mr. Foster's journal I supposed it was; it was open on the desk there before Mr. R. A. Foster.

Q. Was that also dated back ?

A. *It was dated back* — intended to be at least the same date of the *note that I had held and was paid off sometime in the year before; I don't remember the date of the note, but the note had been paid off I think late in the fall.*

Q. How long did you keep that note, if you took it at all ?

A. I had it in my possession several days ; I don't remember just how long.

Q. What became of it ?

A. I took it back, and gave it to R. A. Foster in their office.

Q. Was there any conversation at the time you took it back ?

A. I told him I had had the note long enough ; I was satisfied there was no proceeds in the flour.

X. Q. How much did Mr. Foster owe you, Mr. Goltra, at the time he gave you this note that you have just spoken of ?

A. I think I held a note against him of $2,400 and I think $60 — I won't be positive ; some $60 odd, $2,400 and something ; that is my recollection of it — *for wheat sold just a few days* prior to the transfer of the property.

X. Q. Was that all he owed you at that time ?

A. That is all he owed me at that time.

X. Q. At the time that — how long after the transfer was it that he made this note for $2,700 dated a year back or thereabouts ?

A. I don't remember, but it was only a few days; I couldn't state the date.

X. Q. Was it before or after he gave you a bill of sale of the flour that was in Portland and had been shipped by Sibson, Church and Company?

A. It was after he gave the writing; I never called it a bill of sale; it was intended to cover the proceeds over and above all those claims; it was after that.

X. Q. Where was that writing or bill of sale — we will call it that for the purpose of identification — at the time he gave you the note?

A. I think it was in my office; that is my recollection of it.

X. Q. In your custody, was it?

A. In my custody; yes, sir.

X. Q. Did that bill of sale, or writing, purport to convey to you all the proceeds of the flour that Mr. Foster owned that was situated in Portland and that had been shipped but not sold?

A. All of the proceeds on all of the flour over and above claims already held against it.

X. Q. Advanced, you mean? Advance, was it?

A. Advances or whatever you might call it.

Pages 435-436-437, Goltra testifies:

Q. At the time you took that $2,700 note didn't you know that there was no consideration for it?

A. There was no consideration except what he was manufacturing. That is the way I looked at it.

Q. Didn't you know that there was no consideration for it at the time that you took it?

A. I will state right here that I—every statement made by Mr. Crawford and Mr. Foster to me—they conflicted so much, *that I was satisfied that notes had been, or would be, manufactured to suit the occasion,* and I took that as one of them.

Q. Didn't you know that there was no consideration for that $2,700 note when you took it?

A. I did; but I took it, as Mr. Foster requested, to cover anything for him, as he wished to have the disposition of the proceeds that he was representing; that I was satisfied wasn't there.

Q. You were willing, then, at that time to assist Mr. Foster in that way, were you?

A. I felt friendly towards Mr. Foster, and offered to help him if I could be of any use to him, and take up his paper, so that he could go on with his business, as he had stated to me in substance at different times that he expected to go on with his business again.

* * * * * *

A. I think I have answered that question if I understand it.

Q. I am asking whether you intended to hold the note as Foster wanted you to hold it. Will you please state that?

A. I will answer that I intended to hold the note for the purpose of evidence, as I was satisfied at the time that notes were being made to suit the occasion. I expected to use that note as evidence on my own behalf if I ever had to use it.

Q. Then at that time you were satisfied that Mr. Foster wasn't dealing squarely, were you?

A. I had a very strong suspicion of it ; yes, sir.

Q. And at the same time you offered to assist him ?

A. I offered to assist him in taking up the farmers' paper, and he didn't offer to furnish me money.

Q. You think he could take up the paper without money ?

A. No, sir.

Q. How were you to assist him, then ? By speaking well of him ?

A. My proposition was, that if he could furnish the money, I could take up his paper at a large discount, and enable him, I thought, to go on with his business, as he had represented that he was only $10,000 behind, and I couldn't see if he was only $10,000 behind, why that should stop him from going on with his business.

* * * * * *

Q. But you didn't take the note in good faith ?

A. No, sir ; I didn't, because I had corresponded with those parties in Portland to satisfy myself.

Q. The books are offered in evidence. Will you please turn to the books and find that entry ?

A. I have never handled the books. I presume it can be found.

L. Flinn, Esq., for the defendants: Well, I know there is no such statement in there, and that it can't be found, and, therefore, I have asked the question of Mr. Goltra to turn to that entry, if he can find it.

In response to this challenge, Mr. Goltra finds the entry. It is on page 394 of Exhibit P. "W. H. Goltra: Bills Receivable—$2,749.66. Note

for sixty days, April 2, 1883, at ten per cent." And on page 453 of the same exhibit: "Bills Receivable—$2,749.66 to W. H. Goltra. Note Ret." See also on page 92 of Exhibit G.

Page 439, Mr. Goltra again testifies that this note, in round numbers $2,700, had been paid and was revived in duplicate; also, that he does not know that it was exactly of the same date as the other one, but that it was intended to be so by Mr. Foster himself.

X. Q. How do you know that?

A. Because it was their suggestion.

X. Q. Did he say he made it payable the same day?

A. *He said he would duplicate the other note*, and started in to do so. I supposed he just duplicated the other note in time, and *I know it was dated back*.

Page 440:

X. Q. As a matter of fact, did you read this note and see that it was past due when you took it?

A. Yes, sir.

X. Q. Was it past due?

A. Yes, sir.

X. Q. When you took this $2,700 note?

A. Yes, sir.

X. Q. You read it carefully, did you?

A. I read it enough to know that it was past due. *It was a duplicate of the terms of the other note;* might not have been the specific words.

Page 441 and 442, he testifies:

A. I saw him (Foster) make the entry of the duplicate note, as I have termed it, on some book. I was standing at the end of the desk and he was over there, and as a man generally makes his entries on the journal first I supposed it was on the journal; I didn't notice.

X. Q. Did Mr. Foster ever make to you more than one note of $2,700 or thereabouts?

A. Yes, sir.

X. Q. When was the other?

A. It was a year before the failure; I think it was sometime in the spring.

X. Q. Just one—before?

A. I think it was one year before; I won't be certain. It was a note given for wheat.

A. Yes, sir; I think it was something over $2,700—twenty-seven hundred and about fifty dollars.

Pages 455 and 456, Mr. J. O. Goltra testifies:

A. In April, 1883, Mr. Foster executed a note to W. H. Goltra for, I think, $2,700 and about fifty dollars. I saw that note during the summer of 1883, as I was keeping books for my father at that time, and during the holidays of 1883—the last week of December—that note *was not* among, *was not* in the pouch where my father kept his private notes, and on the first of January I entered all his private business on the store books. That note *was not in his pouch at the time.* I handled all his notes myself. In January he had another note executed to him by Mr. Foster for $2,460. In February, a few days after the failure, I was in Albany

and heard of the failure soon after arriving at the depot On going to the store father was out. I asked the clerk for the keys to the safe, and on examining his notes at the safe I found that not only the note of January was there, but the *note given in April of the previous year was there*, being the note that was *not* there in the holidays.

Q. Which one of these two notes that you have spoken of was the one that was sued on in the State court?

A. The one given in January for $2,460.

Q. Do you know what was done with the other note?

A. Only upon my father's word. I would like to add that the other note was not there when I went to Albany later in the spring. I examined his notes again on the first of May and it was *not* there at that time.

Cross-examination:

Q. Which note do you mean was not there?

A. The $2,760 note.

Q. Was the $2,400 note there at that time?

A. It was.

Q. Do I understand you to say that this $2,750 note that was not there in the holidays, but was there subsequently, was the same note that was given in April, 1883?

A. It professed to have been the same note—was for the same amount, and dated April 2, 1883.

Q. Did you examine that note closely?

A. Yes, sir.

Q. Was the body of the note and the signature in the same handwriting?

A. It is my memory that it was not.

Q. In whose handwriting were they, respectively, if you know?

A. The body of the note was in R. A. Foster's handwriting, and the signature was by J. H. Foster.

Q. State whether the note that was executed on April 2, 1883, was in the handwriting of Robert Foster and the signature the signature of James H. Foster?

A. I could not state positively. The signature, I am quite certain, was in Mr. Foster's hand; but as to the body of the note, I do not remember.

Q. How often did you see that note while it was in your father's possession?

A. Do you mean the note that was given April 2, 1883? I must have read it three or four times. I handled it, I suppose, not less than fifteen or twenty.

Q. Then how is it that you are not now able to state whether the body of that note and the signature were in the same handwriting when you claim to be able to state that the note you found there after the holidays for the same amount was—the body of it—in the handwriting of Robert Foster and the signature that of James H. Foster?

A. At the time the note of April was in my father's possession there was nothing to make me take any particular notice of the handwriting. After the failure, when I was in Albany, in February, I noticed the notes and made memorandums of the facts in regard to them —as to what the writing was and the dates. I had not done this in regard to the notes during the previous summer, not expecting to be called on at any future time in regard to them.

Q. What caused you to make any such memorandum as that?

A. For the reason that I supposed that possibly I might at some future time be asked as to my knowledge of the notes.

Pages 457 and 458, he testifies :

Q. Did you and your father talk it over about that time?

A. In February he told me, *on my remarking to him that I thought the $2,750 note had been paid*, that Mr. Foster had *duplicated* the note in order to cover certain proceeds of flour, said by Mr. Foster to be in the hands of the Bank of British Columbia, and the proceeds of which he had assigned to him to cover the $2,460 note and the $2,750 note.

Q. Who, if any one, was present when he told you any such thing as that ?

A. I think L. W. Deyoe was in the office, if any one.

Q. Did you and your father ever talk over the matter of Foster having given him that $2,750 note before you and he testified in the suit of Goltra against Foster and Crawford ?

A. I do not remember of having any conversation with him specifically about that note after February of 1884.

Q. What did he say to you about it then?

A. He said that the note that had been paid in October, that was given in April, 1883, had been duplicated by Mr. Foster in order to cover the proceeds of the flour, which I mentioned a few moments ago—that

is, that note in company with the other note, as I stated a few moments ago.

Page 460, he testifies:

Q. Why did you not post this note that you found?

A. Father instructed me *not to post* it, for the reason that it *was bogus.*

IX.

MR. CRAWFORD'S PERSONAL CHARACTER NOT TRUTHFUL.

Page 174, Mr. E. T. T. Fisher, foreman of the Grand Jury, testifies:

Q. State what proceedings were had before the Grand Jury, as against Mr. John A. Crawford.

A. The grand jury were investigating a case of perjury, bringing an indictment against Mr. Crawford for bribery (perjury).

Page 176:

Q. State what the charge was about that you were then investigating?

A. The charge was that he had not given in all of his property to the assessor when he was giving in his taxable property.

Mr. Crawford himself testifies that he would not hesitate to lie to people if they questioned him about business he did not wish to disclose.

Page 324 John Crawford says:

Q. J. L. Hill testifies in substance that in a conversation you had with him before the sale of the property by Foster to you that you said that Foster had owed you at one time about 20 or $24,000 *but that it was paid*, or words to that effect; what was there about that conversation? State how it was?

A. I can't recollect what conversation I had with him at that time. There was one thing I do know; if people was to try to find out my private affairs I gave them an evasive answer, that I did not know or I do not recollect, or something of that kind.

Page 335, he testifies,

Q. Did you have those notes when you talked with Mr. Goltra in 1883? (Exhibits 11 and 12).

A. I expect they were in the safe. I never knew of them being out of it.

Q. Did you have those notes when you told Mr. Goltra that Foster did not owe you anything?

A. I don't know that I ever told Goltra that.

Q. Do you know whether you did or not?

A. I don't *think* I did. I know that when parties asked about my private business I gave them an evasive answer.

Q. When he asked you if Foster was owing you anything was that your private business or Foster's?

A. Well, it was mine.

Page 336:

Q, And if he had asked you in that conversation if Foster was owing you a considerable amount of

money, would not you have told him that he was owing you?

A. *I would not.*

Q. And if you had told him anything, would not you have told the truth?

A. If I told him anything—(interrupting).

Q. I asked whether you would have told him the truth?

A. I don't recollect whether he ever asked me or not.

Q. I asked you if you had told him would not you have told him the *truth*?

A. Well, if I thought any person was asking me questions with regard to my private business, I should put them off as easy as I could and give them an evasive answer, for I never made a practice of telling my affairs.

Mr. Crawford's evasive character is shown in his refusal either to admit or deny his signature and hand-writing in his tax return (Exhibit D), given on pages 177 and 178, and his failing to recollect any of the damaging conversation as given by the complainant's witnesses, when he is called upon to rebut them. See pages 359 to 361 inclusive.

The persons used by Foster in this transfer were his life-long and confidential friends and relatives—no others.

Crawford has assisted him years before in a similar difficulty. Ashby Pearce is his brother-in-law. L. Gray, who remained with Foster in charge

of the property as before, is his brother-in-law, and Dr. Gray is his brother-in-law.

As of a piece with this whole transaction, we call attention to Dr. Gray's testimony in regard to the $10,000 note given by Crawford to Foster as part of the consideration of the transfer.

Pages 421 and 422, he testifies:

Q. What note, if any, was placed in your possession to hold in trust for J. H. Foster, signed by John A. Crawford, on or about the 6th day of February, 1884?

A. I didn't have any particular note intrusted to me. I *purchased* a note of Mr. J. H. Foster, on Mr. J. A. Crawford, with certain conditions.

Q. Did Mr. Foster place in your hands a note to hold in trust for him, signed by John A. Crawford, calling for the sum of $10,000, which you held for a short time to secure the purchase by Crawford of a lot of outstanding wheat about that time?

A. I *purchased* a note of Mr. J. H. Foster, on J. A. Crawford, for $10,000 with certain conditions.

Q. When did you purchase it?

A. I couldn't give the date.

Q. About the date?

A. I couldn't give any date, for I don't remember.

Q. What year?

A. It was the same year that Mr. Foster bursted up.

Q. What were the conditions that you purchased the note of $10,000, signed by John A. Crawford, in favor of James H. Foster?

L. Flinn, Esq., for the defendants: Same objection as last above.

A. The conditions, as near as I remember them, were, that in case a certain amount of wheat was produced, Mr. Foster should have the note back—wheat to be purchased by Mr. Crawford.

Q. Who made that condition, and who was it made with?

A. Mr. Foster and I.

Q. Was that all the condition there was about it?

A. I believe it is.

Q. What did you pay for the note?

A. I paid $9.500.

Q. Who did you pay it to?

A. Mr. Foster.

Q. Did you have that much money on hand at that time?

A. No, sir.

Q. How did you pay him?

A. *I gave him my note.*

Q. You just exchanged notes with him?

A. I gave him my note for that note on Mr. Crawford.

Q. Did you pay your note that you gave him; did you pay the note for $9,500 that you gave to Mr. J. H. Foster?

A. No, sir.

Q. Does he still hold that note?

A. No, sir.

Q. When did you pay it?

A. I gave it to him back again when that wheat was purchased—the condition of the note on which the note was given—was purchased.

Q. Does he still hold the note that you gave him, $9,500.

A. No, sir; I just stated that I got that note back when this wheat was purchased by Mr. Crawford—the conditions on which I purchased the note from Mr. Crawford when they were fulfilled.

Page 423:

Q. Didn't you testify in a case wherein W. H. Goltra was plaintiff, and J. H. Foster and John A. Crawford and William Crawford were defendants, in the Circuit Court of Linn County, State of Oregon, at the June term of that court, 1886, before Judge Boise, that you never had a note in your possession signed by John A. Crawford, in favor of James H. Foster, for the sum of $10,000, the 6th day—the 6th or 7th day—of February, 1884?

A. No, sir; I did't. I testified in answer to a question something like this: Was there any note left—I don't remember the exact words of the question—was there any note left in your care or in your possession for your safe keeping, or something to that effect, belonging to him? and I said no; I didn't know of any particular note; that I didn't know that I had any particular note left in my care. That was the substance of it. I didn't consider when I purchased the note that it was just simply left in my care.

Q. What other transaction did you have with Mr. Foster about that time?

A. I don't recollect of having any other transaction with him now.

Q. Did you buy any property for him?

A. I never bought any property for Mr. Foster that I recollect—that is, any real estate property.

Q. Do you hold any in your name for him?

A. No, sir.

Q. For him or any of his children?

A. I purchased property for some of his children.

Q. Which one?

A. Mrs. Powell.

Q. Who furnished the money?

A. I *supposed* she furnished it. I don't know who furnished it, unless she did.

Q. What property did you purchase up there?

A. I purchased a quarter of section of land—prairie.

Q. Near Halsey?

A. Yes, sir.

Q. When?

A. I believe it was last spring. I couldn't tell—couldn't give the date—but I believe it is last spring. If I had known you wanted the dates I could have brought them with me, perhaps.

Q. In whose name is that property now on the record?

A. It is in my name.

Q. Some one else furnished you the means to buy it with?

A. She furnished a part and I furnished a part.

Q. Who went to examine the land before you purchased it?

A. I don't know; I think Mr. Foster went up to look at the land.

Q. Did you ever look at it?

A. I have been over it; yes, sir.

Q. Did you have him go up and look at it before you bought it?

A. Yes, sir.

Q. He went up to look for you?

A. To look for me and for his daughter.

Q. He advised you with reference to it, did he?

A. Yes, sir.

Q. Did he hand you the money with which you paid for it, or a portion of it?

A. *I think he did—a portion of it.*

Pages 424 and 426:

Q. What proportion of it?

A. About *half.*

Q. Who furnished the other half?

A. I did.

Q. Do you remember the amount he handed you?

A. No, sir: not exactly.

Q. Approximate as near as you can?

A. I don't like to make an approximation unless I could give the sum.

Q. Was it as much as $5,000?

A. No, sir.

Q. $3,000?

A. No. sir.

Q. $2,500?

A. No, sir.

Q. Well, about how much?

A. My recollection is that it was in the neighborhood of $1,500; might have been more or less.

Q. What paper did you execute to Mr. Foster or his daughter for the conveyance of that land, if any?

A. I couldn't give the exact statement of that. I took Mrs. Powell's notes—4 notes of her for $400 each—for the payment of the amount that I put into the land, with interest at 10 per cent. per annum on each note.

Q. Did you execute any kind of a paper at that time and deliver it to her or to Foster?

A. I did.

Q. What was the nature of it?

A. I don't recollect.

Q. Have you the paper?

A. No, sir.

Q. Where is it?

A. I don't know whether Mr. Powell has it or not.

Q. Who did you hand it to?

A. I am not sure, but I think I handed it to *Mr. Foster*, as he was advising in reference to his daughter's business.

Q. With whom did you do most of the business—with Mr. Foster or his daughter, Mrs. Powell,

A. Did most of it with Mr. Foster, as he was advising with his daughter.

Q. Isn't it a fact you did it all with Mr. Foster?

A. I don't know that I did it all or not. I am not sure whether I had any direct letters from Mrs. Powell on the subject or not.

Q. Did you ever talk with Mrs. Powell about it before the transaction was consummated?

A. No, sir; I think not.

Q. All the talk was done with Foster?

A. My recollection is that the principal talk and the business was done through Mr. Foster.

Q. Who receives the rent of that place?

A. I receive it.

Q. What do you do with the proceeds of it?

A. Apply it towards the payment of the interest on these notes that I hold for the money that I loaned. The wheat is turned over to me at the warehouse to satisfy the interest on these notes that Mrs. Powell gave me in payment for the land.

Q. Who turns it over to Mr. Foster?

A. I think it is turned over by the man that owns the farm to the warehouseman in my name.

Q. Mr. Foster rents it, does he?

A. No, sir; I rent it. *Mr. Foster attends to the business for me* when it is convenient for him to get there in behalf of his daughter; as she is the—, the land belongs to her.

Q. Have you been on the farm since you purchased it?

A. No, sir.

Q. Do you know who lives on it now?

A. I don't know his name. He is a German.

Q. Isn't that the same place that Mr. Foster was negotiating the purchase of just before his failure?

A. I don't know whether he was negotiating for the purchase of the place before his failure or not; not that I know of.

Q. Who examined the title before you purchased it?

Pages 427 and 428.

Q. Doctor, what was the cause or reason of your buying that Crawford note at the time that you did?

A. I don't know as I had any particular reasons for it.

Q. Was there any conversation between you and Mr. Foster at the time?

A. Yes, sir,

Q. What was it?

A. *I don't recollect what conversation we had;* we talked very often; we frequently talked together about business.

Q. What was said about you buying the note of him?

A. I don't recollect what he said. He said that he wanted to secure the purchase of this wheat.

Q. Crawford's note was considered good, was it not?

A. I believe so.

Q. Fully as good as yours?

A. I don't know as to that. I suppose it depends on how people think of he and I. Mine might not be considered worth much; I don't know.

Q. You consider it as good as yours?

A. If I had'nt I would'nt have purchased it, I don't think.

Q. You made $500 on the purchase?

A. That was the understanding, that I was to have $500 if I had to collect the notes, if the wheat was'nt purchased.

Q. Did you ever receive anything at all on it?

A. No, sir; Mr. Foster said that Mr. Crawford had purchased the wheat, and then the conditions on which the note was purchased was fulfilled, and I returned him the note for my own.

Q. Gave up $500?

A. Yes, sir.

Q Did he tell you at that time that he was in failing circumstances?

A. *I don't recollect what he told me.*

Q. Did he give you any reason why he wanted to sell the Crawford note?

A. I suppose he did assign some reason; I don't recollect.

Q. You can't recollect anything about it?

A. Very little.

Q. Tell what you do.

A. Because those things I give my mind as little consideration as I can.

Q. Were you in the habit of making purchases of $10,000 notes so often that you didn't think about it?

A. No, sir.

Q. Did you ever before or after that time buy a note for $10,000—note on a person?

A. No, sir.

X.

AT THE TIME OF THE FRAUDULENT TRANSFER, FOSTER, THOUGH IN DEBT, WAS PROBABLY NOT AS HEAVILY INVOLVED AS HE ASSERTS.

We have already shown that between the time when Foster acquired the mill, 1867, and the time of the fraudulent transfer, 1884, Foster had built the Albany water works and the brick block, which is one of the subjects of controversy here, had expended over $40,000 in cash on improvements and repairs of the mill and had had a settlement with the Crawford brothers in 1876.

Foster himself says that when he acquired the mill he was not owing anything; or, if anything, some trifling amounts only.

Crawford, in 1882 and 1883, says Foster is not owing anything. We have also seen that with the exception of these very ancient, and what we call revived notes, the evidences of indebtedness against Foster (that is, the Bank of British Columbia and Bank of Albany notes) are dated a comparatively short time before the transfer.

We have also seen that it took less than $10,000 to clear up his wheat shortage account, and this suit now at bar is evidence that really his principal creditor, who was making the advances on his flour, has never been paid.

We have seen that up to the *last day* before the transfer he was buying wheat and giving his note for it.

From all of which we argue that up to 1882, Foster was not in debt, or if so, it was an inconsiderable amount.

Foster himself has testified that he had made $100 a day nett profit in the mill and could do it again.

On pages 241 and 242, Foster testifies that he shipped to Sibson, Church & Co. two lots of flour of 10,000 one hundred pound sacks, and that there were 15,000 one hundred pound sacks in the warehouse in East Portland held as collateral by the Bank of British Columbia. This would be an aggregate of thirty-five hundred thousand pounds.

Page 242, he says that it takes 196 pounds of flour to make a barrel. Calling it 200 pounds, for round numbers, the flour handled by Sibson, Church & Co. for him (the court will remember that they afterwards took the Bank of British Columbia flour) would aggregate something over seventeen thousand barrels.

Page 242, he says he sold a lot to Balfour, Guthrie & Co. of 5,000 barrels.

Page 242, he says he sold and shipped between 22,000 and 23,000 barrels from the harvest of 1883 up to the time of the transfer.

On the same page, to a later interrogatory, he thinks he must have *manufactured* as much as 30,000 barrels.

Page 264, he testifies:

Q. Is it not true that the feed, bran and shorts from the mill would more than pay all the running expenses of the mill and the grinding of the flour?

A. I presume it *would*.

Q. So the flour, then, was nett. You received for it what it brought in the market clean and clear of all expenses in manufacturing it into flour, and all the cost you were to was the cost of the wheat alone. Is not that true?

A. It all required sacks to put it in and it required freight to send it to market and some other expenses.

Therefore, by Mr. Foster's own admission, the sale of at least 30,000 barrels of flour must have been net profit to him, and it is quite sure that he got *more* than the market price for about 15,000 barrels; because Sibson, Church & Co. were at that time losers on the advances to him about $9,000 over and above all returns. So that the loss did not fall on Mr. Foster, but upon his brokers. Sibson, Church & Co. have not been paid. W. C. Noon & Co., who furnished the sacks for the flour, have not been paid. Anderson, Matasce and various farmers who furnished the wheat from which the flour was made have not been paid. The money must have gone somewhere, and it is our belief that it went to

the lifting of the Bank of British Columbia note in Crawford's name, and the Bank of Albany note in Pearce's name, and the balance in trust to John Crawford for Foster, to be used as the business might require. We have seen that Foster furnished part of the purchase money for the Halsey farm; that in Crawford's name wheat was bought and the mill was run as before.

SUMMARY.

We review the salient features of this case as follows:

If the mill was bought in 1867, and Foster then was out of debt, and between that time and 1881 forty thousand dollars was expended in repairs and improvements, the probabilities are that the notes given for the purchase price were fully paid.

It is improbable that not even the interest on these notes should be paid. It is improbable that the Crawfords should not ask for the payment of interest or principal, seeing Foster expend these large sums of money.

If the only reason for cancelling the mortgage was to evade the mortgage tax law, it is strange that William Crawford neglected to do this very thing. Moreover, under the Oregon law, with the interest reduced to eight per cent., and Foster agree-

ing to pay the taxes, there was no necessity for the cancellation, as there could be but one taxation of the indebtedness.

The universal statement of William Crawford, John Crawford and James Foster is that the mortgage was *paid* and *settled*. There can be but one meaning to these terms. It is very strange that in the settlement of 1876 the mill notes did *not* appear, if they were in existence. Ten thousand dollars indebtedness is certainly no great amount for a prosperous mill to clear off in ten years, and Foster himself testifies that while at some times he had met with heavy losses, he at other times had made great profit.

It is also strange that in the settlement of 1876 these old notes, Exhibits 10, 11, 12 and 14, between Crawford and Foster, *were entirely left out*. It is strange that, with all his prosperity and money-making, not even the *interest* on these notes was paid regularly; also that none of these notes *were ever entered in any of the books*.

It is also inconsistent with any large indebtedness due from Foster to the Crawfords, that the Crawfords should be paying to Foster *cash* in settlement of their account at the mill. It would have been most natural to have applied their account to a reduction of the rapidly increasing interest in default. Strengthening this circumstantial evidence, are John Crawford's own admis-

sion in 1882 and 1883, that Foster *owes him nothing*, made, not only to a body in solemn session, as the Grand Jury, but also to friends in mutual confidence, as in the case of Dr. Hill and Mr. W. H. Goltra.

It is evident that those who *dealt* with Foster—his factors, the farmers, and others—met with the losses. Foster, neither in direct nor in cross-examination, is able to point out where *his* losses come in, except in a vague and general statement, which any man might make, that he had paid out money to farmers. *No vouchers* are shown to support this; *no names* are given. And the same may be said of Crawford's claim that he paid out $10,000 on Foster's wheat shortage. *There is nothing to substantiate it.*

If all those who dealt with Foster met with the losses, and if he was manufacturing flour at a nett profit, someone, somewhere, must have made and secreted money.

As to the personal character of these men, the testimony of the Goltras, father and son, shows distinctly that Foster revived and duplicated a paid note between himself and Goltra, for the purpose of securing to himself (Foster) any proceeds that might come from the Bank of British Columbia flour.

A man who will concoct a scheme such as this to defraud a creditor who has advanced him money, must, in law, be held capable of any fraud.

Also, accepting Foster's own story as true that he was a bankrupt and in dread of the penitentiary, he was still, within a few days of his failure, buying the wheat from such men as Anderson, the Hurlburts and Matasce, stripping them of their little all, and giving them his worthless paper therefor, when he knew that he was on the eve of an assignment. If such conduct is not rascally, we are at a loss how to characterize it.

As to Crawford's character, he has been indicted by the best men of his own county for perjury. He himself said, in this case, that he would not tell a man the truth who sought to inquire into his affairs.

Foster remains in the same house he occupied before, *rent free*; he manages the mill *as before*, and though nominally on a salary of $75.00 per month, he draws no *fixed sum*, but lives upon the mill *as his necessities require*; and no *note* or *account* of any of this is kept in any book by anybody, anywhere. He transfers property upon his own valuation worth $76,000 to protect him, according to his own story, from short wheat claims *which did not aggregate $10,000.* After having lived his whole life in this county, and the persons whose

wheat he had in store being presumably his friends, it seems to be a very unworthy tale that he was obliged to strip himself of *all that he possessed* in order to protect himself against $10,000 worth of wheat he had on store from his own friends.

In short, we believe this transfer was wholly fraudulent and was made to shut off the Portland creditors that had been making the advances to Foster,—in order to protect himself.

THE LAW.

We shall not touch upon the more elementary propositions in regard to fraudulent conveyances, but will take up a few points especially applicable to this case.

We have already shown from the mouth of John Crawford himself that he has always managed his brother William's business. (See page 332.) Foster says he bought the mill from John Crawford, but the deed came in the name of William. It distinctly appears in evidence here (page 419) that William Crawford knew nothing of this particular transfer until after it was accomplished, John Crawford attending to the whole business for him. William Crawford was not present at Strahan's house that night when the deeds were drawn and delivered.

Upon these facts our contention as a legal proposition shall be:

THAT JOHN CRAWFORD WAS PRACTICALLY AND IN EQUITY A CO-GRANTEE WITH HIS BROTHER WILLIAM CRAWFORD; AND IF THE CONVEYANCE TO WILLIAM CRAWFORD IS VOID, THEN THE WHOLE TRANSACTION IS VOID: FOR A CONVEYANCE TO A GRANTEE FOR A VALID CONSIDERATION IS VOID IF THE GRANTEE KNEW THAT A CONVEYANCE TO A CO-GRANTEE WAS FRAUDULENT AND FICTITIOUS.

Swartz *v.* Hazlett, 8 Cal. 129.
Lewis *v.* Caperton, 8 Grattan 148.
Bump on Fraudulent Conveyances (2nd Ed.) p. 479.

A CONVEYANCE FOUNDED IN PART UPON A FRAUDULENT CONSIDERATION WILL NOT BE SUSTAINED TO THE EXTENT OF THE HONEST CONSIDERATION, BUT IS VOID ALTOGETHER.

Baldwin *v.* Short, 26 N. E. Rep. 928.

A CONVEYANCE MADE TO SECURE PART OF THE PROPERTY TO THE GRANTEE UPON A VALID CONSIDERATION, BUT TO COVER IN THE RESIDUE FOR THE GRANTOR, IS VOID AS TO THE WHOLE.

Swinford et al. *v.* Rogers et al., 23 Cal. 236.
Chase *v.* Walker, 26 Me. 555.
Rice v. Cunningham, 116 Mass. 467.
Macomber v. Peck, 39 Iowa 351.
Bump on Fraudulent Conveyances (2nd. Ed. pp. 476 and 356).

IT IS IMMATERIAL WHETHER THE PROPERTY IS PARCELLED OUT IN ONE OR SEVERAL DEEDS AND WHETHER THE PAPERS ARE EXECUTED ON THE SAME DAY OR NOT IF DONE TO EFFECT THE SAME DESIGN, ALL MUST BE REGARDED AS ONE TRANSACTION.

Mussey *v.* Noyes, 26 Vt. 471
Burrows *v.* Lehndorf, 8 Iowa 103.
Berry *v.* Cutts, 42 Maine 445.
Spaulding *v.* Strong, 38 N. Y. 15.
Bump on Fraudulent Conv. (2nd Ed.) 355.

A CONVEYANCE IN FRAUD OF THE GRANTOR'S CREDITORS IS VOID ALTHOUGH THE GRANTEE PAYS THE FULL VALUE IF HE PARTICIPATED IN THE FRAUDULENT PURPOSE.

Renninger *v.* Spatz, 18 Atlantic Rep. 405.
Hunsinger *v.* Hoffer, 11 N. E. Rep. 463.
Gardiner *v.* Otis, 13 Wis. 460.

WHERE THE GRANTOR REMAINED IN POSSESSION AND CONTINUED TO MANAGE THE PROPERTY AS BEFORE, HIS DECLARATIONS MADE IN CONNECTION THEREWITH ARE ADMISSIBLE AS EXPLANATORY OF THE UTION.

Redfield *v.* Buck, 35 Conn. 329.

POSSESSION IS PART OF THE *RES GESTÆ;* AND WHERE THE GRANTOR REMAINS IN POSSESSION, HIS ACTS AND DECLARATIONS ARE COMPETENT EVIDENCE EXPLANATORY OF THEM.

United States *v.* Griswold, 7 Sawyer, 296.

WHEN THE *BONA FIDES* OF A TRANSFER IS ATTACKED BY CREDITORS, AND SOME EVIDENCE HAS BEEN GIVEN TENDING TO SHOW A COMMON DESIGN BETWEEN THE GRANTOR AND THE GRANTEE TO DEFRAUD, DECLARATIONS OF THE GRANTOR AFTER THE TRANSFER ARE ADMISSIBLE.

Hartman *v.* Diller and Graff, 62 Penn. St. 37.
Deakers *v.* Temple et al., 41 Penn. St. 234.

POSSESSION AND MANAGEMENT AFTER SALE IS A BADGE OF FRAUD.

Lukins *v.* Aird, 6 Wall. 78.
Callan et al. *v.* Statham et al., 23 How. 477.

WHERE THE GRANTOR, BEING GREATLY IN DEBT WITH SUIT THREATENING, CONVEYED HIS LAND FOR A CONSIDERATION ABOUT ONE-HALF ITS VALUE AND CONTINUED IN POSSESSION THE SAME AS BEFORE; *HELD*, THAT THE CONVEYANCE WAS VOID AS AGAINST CREDITORS.

Hudgins et al. *v.* Kemp, 20 How. 45.

All of which is respectfully submitted.

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Attorneys for Charles A. Neal.

FILED.
MAR 24 1892
JAMES H. McKENNEY.
CLERK.

C. G. Burgoyne's Printing Business, [illegible]

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1891.

WM. CRAWFORD, Appellant, vs. CHAS. A. NEAL,	No. 186.
AND	
CHAS. A. NEAL, Appellant, vs. JNO. CRAWFORD and ASHBY PEARCE.	No. 278.

Jurisdiction.

THE ASSIGNMENTS WERE IN GOOD FAITH AND ABSOLUTE.

References are to pages of the printed record.

Mr. Gibson says (pp. 380–384) :

"We have parted with our entire interest. There was no secret trust or qualification about it."

Quackenbush says (p. 391) :

"The assignment was in good faith without reservation."

Osborn says (p. 393) :

"There was no understanding or condition that suit was to be brought in the U. S. Court and his firm have no interest whatever in the litigation."

The hesitation of Mr. Gibson in answering questions as to his relation with Ladd and Tilton is readily explained by the facts shown on page 382.

Mr. Flinn, the cross-examiner, was the brother-in-law of Mr. Church, the retired member of Mr. Gibson's firm. Church had retired owing the firm $20,000. Mr. Flinn had been consulted in this very case he was now defending, and all the facts laid before him on which he had pronounced Foster's conduct fraudulent (pp. 382, 383).

Mr. Gibson became indignant at Flinn's using his cross-examination to try and expose the full measure of his (Gibson's) insolvency and to elicit facts of value to Church, who was still held by Gibson accountable to the firm.

Mr. Ladd's hesitation in answering arose partly from the same reason and partly because he was really ignorant of the facts. He says (p. 395) : "These matters in connection with the Gibson business and the mill business are left entirely to Wilcox." He said :

"That is all right, and I signed it just as I have a hundred other things" (p. 396). He says, "If you want to get at the *facts* ask Mr. Wilcox" (p. 396). He says Chas. Neal, to his knowledge, does not hold the judgment in trust for any one, and see cross-examination, page 397 and page 400. Chas. Neal is able to meet these notes or any other obligations he has incurred.

What Neal's financial ability is may then be inferred from the fact that he had bought and given his notes for the Portland Flouring Mills (p. 379). The whole transaction is inferentially clear from the testimony. Neal came to Oregon, arranged to buy up this milling business, made his cousin his attorney in fact, gave his notes till the various odds and ends were all cleared

up, and there is nothing to show that the notes have not been fully paid.

NO PORTION OF THE INDEBTEDNESS WAS SUBSEQUENT.

The *advances* were all made or the obligations incurred *before* Foster's failure, but the accounts were not made up and could not be till the settling up of the cargoes in Europe. All this is fully explained (pp. 377, 385).

In conclusion, I desire to emphasize the chronology of events as to the William Crawford mortgage. It was canceled in *1883* to prevent, we will say, double taxation. That is the excuse now given. In *1881* Wm. Crawford, by his sworn tax return facing page 473, puts the total debts due him at only $5,000.

In *1880*, at latest, Foster tells Connor the mortgage has been paid (p. 145). Some quibble is made over the words "I think." It is an error in punctuation and belongs to the preceding sentence; but, on page 146, the witness repeats emphatically: "He said it had been *paid* and *settled*."

In *1882* John Crawford tells the Grand Jury Foster owes him nothing.

Respectfully submitted.

C. E. S. WOOD.